

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LAHAINA-MAUI CORPORATION,
California corporation,

Appellant,

v.

PH TAU TET HEW and HELEN
NA HEW, husband and wife,
GE TAN and SHIZUKO RUTH
husband and wife,

Appellees.

FEB 10 1957

NO. 20419

APPEAL FROM SUMMARY
JUDGMENT GRANTED BY
THE UNITED STATES
DISTRICT COURT FOR
THE DISTRICT OF HAWAII

Chief Judge Martin
Pence

BRIEF FOR APPELLEES

FILED

DEC 11 1956

FRANK M. EDWARDS CLERK

J. RUSSELL CADES
WILLIAM M. SWOPE
165 South King Street
Honolulu, Hawaii

Attorneys for Appellees

Counsel

TH, WILD, BEEBE & CADES

RECEIVED

DEPARTMENT OF PHYSICS

CHICAGO, ILL.

TO THE PHYSICS DEPARTMENT

FROM THE PHYSICS DEPARTMENT

DATE

RECEIVED

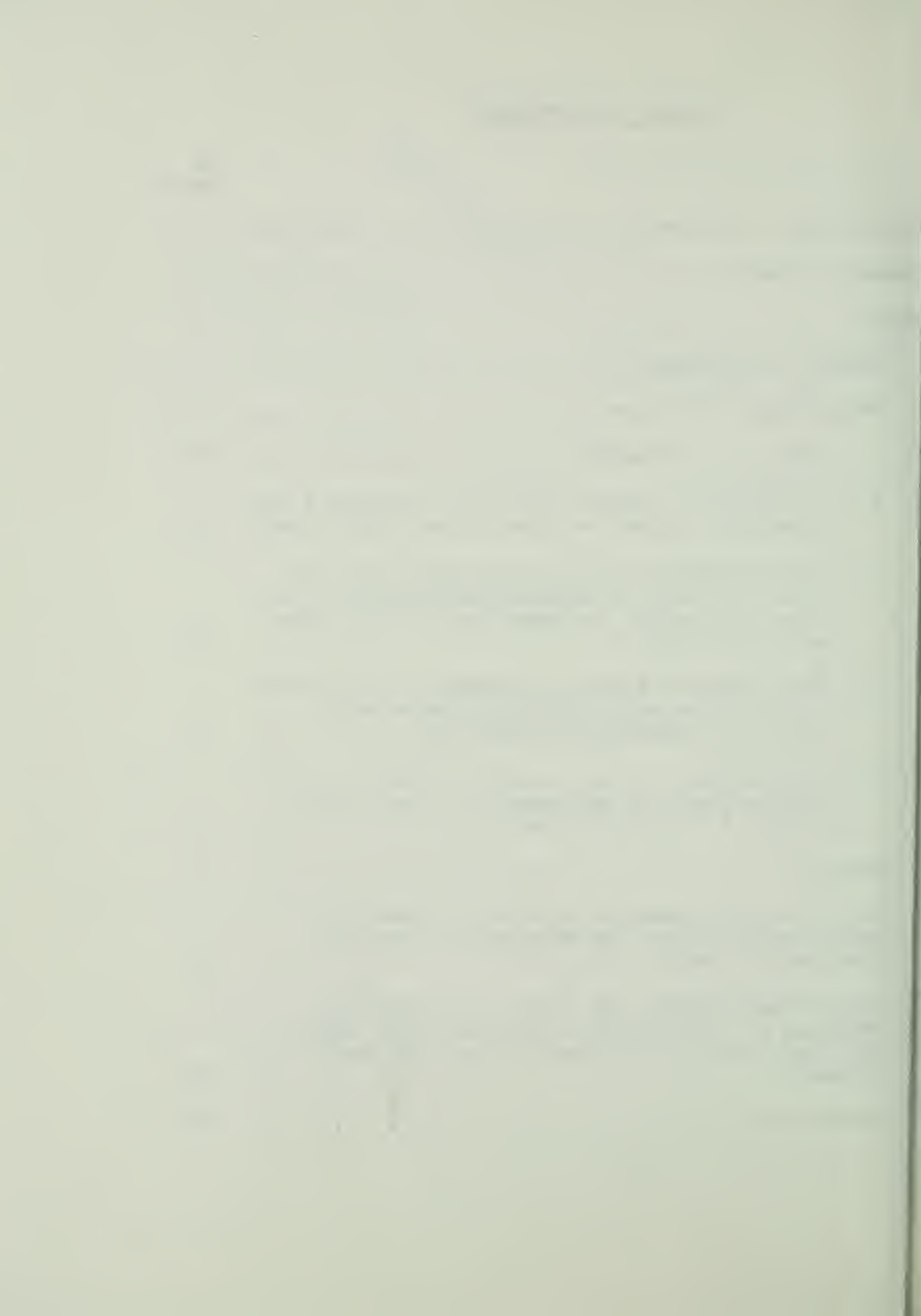
NOV 1951

PHYSICS DEPARTMENT

CHICAGO, ILL.

TABLE OF CONTENTS

	Page
Jurisdictional Statement.....	1
Statement of Facts.....	1
Document:	
I. Summary of Argument.....	7
II. Subordination Clause.....	9
A. Statute of Frauds.....	10
B. An option to lease which is incomplete and uncertain cannot be specifically performed	13
C. Definiteness of the provisions of an op- tion to lease is determined either on the date the option is exercised or the date suit is filed.....	14
D. The proposed leasing agreement would have contained a subordination clause and other non-standard provisions.....	15
E. As a matter of law, a subordination pro- vision requires agreement on the condi- tions of the subordination.....	17
III. Waiver.....	31
IV. An Action for Damages in Lieu of Specific Performance Cannot Be Maintained under the Statute of Frauds.....	39
V. Lis Pendens Cannot Be Filed in an Action Pending in the United States District Court for the District of Hawaii Involving Real Property.....	40
VI. Conclusion.....	43



INDEX OF CITATIONS

<u>Cases</u>	<u>Page</u>
American Mining Co. v. Himrod-Kimball Mines Co., 4 Colo. 186, 235 P.2d 804 (1951)	29
Greula v. Slovak Gymnastic Union Sokol Assembly 5 N.J.Eq. 260, 47 A.2d 878, <u>aff'd</u> 8 A.2d 191 (1946)	30
Rockmore-Danzig Co. v. Silsbee, 131 Misc. 340, 5 N.Y.Supp. 767 (Sup.Ct. 1927)	12
Anton v. Williams, 209 Ga. 16, 70 S.E.2d 461 (1952)	34
Evving v. Vandover, 240 Mo.App. 117, 218 S.W.2d 5 (1949)	14
Tham-Trenary Land Co. v. Swigart, 220 Mich. 7, 189 N.W. 1000 (1922)	30
Colorado Corp. v. Smith, 121 Cal.App.2d 374, 263 2d 79 (1954)	29
ely v. Fate, 227 Cal.App.2d 418, 38 Cal.Rptr. 0 (1964)	24
0 President Street Corp. v. Bolton Realty Corp., 300 N.Y. 63, 90 N.Y.S.2d 50 (Ct.App.), N.E.2d 16 (1949)	11
stein v. Kuhn, 225 Ill. 115, 80 N.E. 80 (1906)	32
ncone v. McClay, 41 Haw. 72 (1955)	12, 13, 16, 18
dstine v. Tolman, 157 Wis. 141, 147 N.W. 7 914)	17
don v. Siegel, 125 N.Y.S.2d 862 (Sup.Ct.), <u>aff'd on other grounds</u> , 132 N.Y.S.2d 437 953)	29
ld v. Callan, 127 Cal.App.2d 1, 273 P.2d 93 954)	20, 21, 22, 24, 25, 27
M. Weill Co. v. Creveling, 181 App.Div. 282, 168 Y.S. 385 (1917), <u>aff'd without op.</u> , 119 N.E. 48	12, 28

[The page contains extremely faint, illegible text, likely bleed-through from the reverse side of the document. The text is arranged in approximately 20 horizontal lines across the page.]

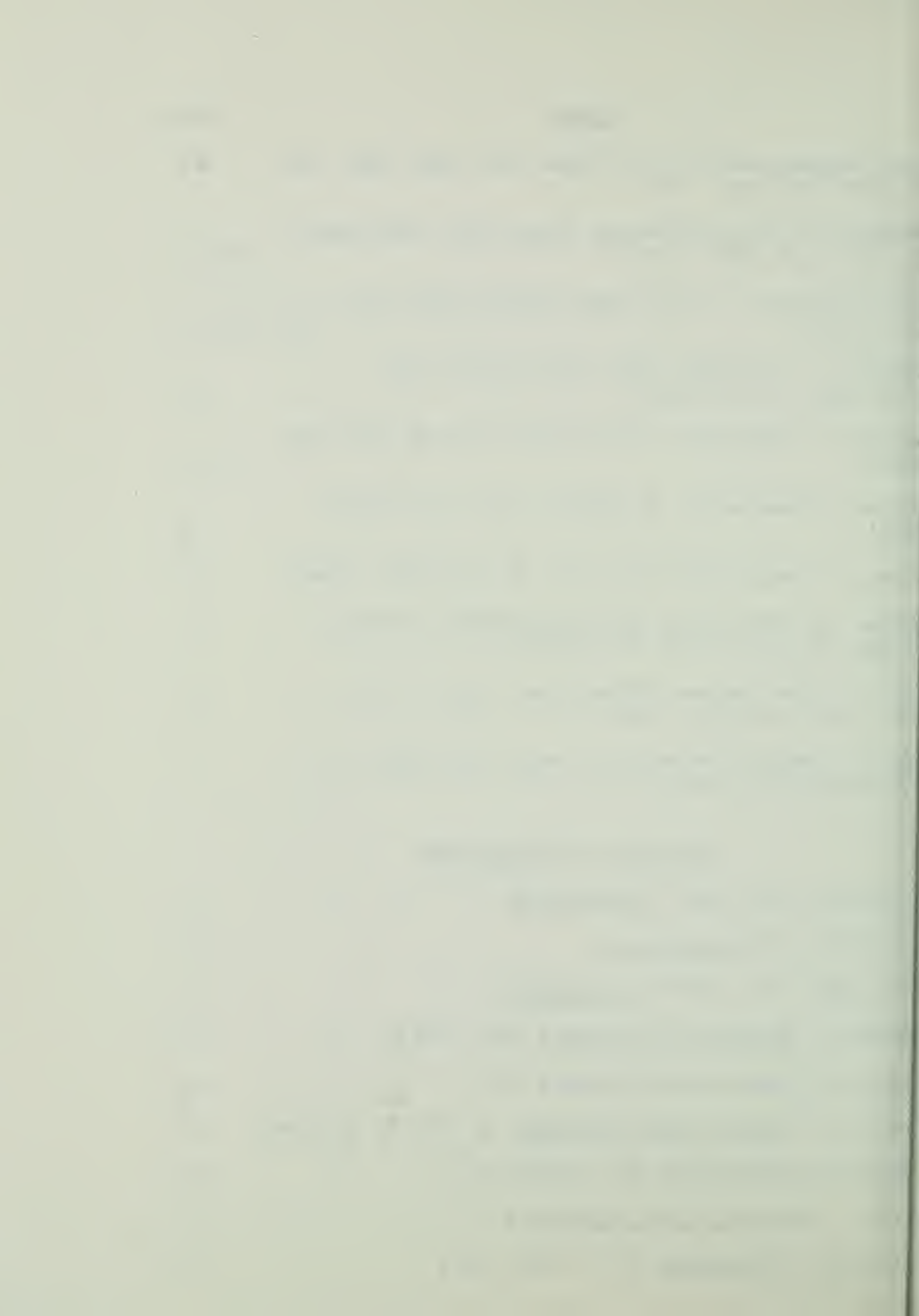
<u>Cases</u>	<u>Page</u>
re v. Patterson, 63 Wash.2d 282, 386 P.2d 53 (1963)	34
dner v. Hewitt Chevrolet Co., 166 Kan. 11, 199 2d 481 (1948)	14
ard v. Beavers, 128 Colo. 541, 264 P.2d 858 (1954)	30
bell v. Ward, 40 Wash.2d 779, 246 P.2d 468 (1952)	34
sper v. Wilson, 14 N.M. 482, 94 Pac. 951 (1908)	32
ssler v. Sapp, 169 Cal.App.2d 818, 338 P.2d 34 (1959)	22, 24
ng v. Davis, 137 Fed. 222 (Cir.Ct. Va. 1905)	vii
on v. Maui Dry Goods and Grocery Company, Ltd., Haw. 313 (1928)	33
sky v. Berger, 225 N.Y.S.2d 797 (1962), <u>aff'd</u> <u>without opinion</u> , 249 N.Y.S.2d 858 (Sup.Ct. op.Div. 1964)	25
vine v. Lafayette Bldg. Corp., 103 N.J.Eq. 121, 42 Atl. 441 (1928)	34
na Development Company v. Reed, 228 Cal.App.2d 30, 39 Cal.Rptr. 284 (1964)	25, 31, 36, 37
Carty v. Harris, 216 Ala. 265, 113 So. 233 (1927)	19
Knight v. Broadway Inv.Co., 147 Ky. 535, 145 W. 377 (1912)	17
rcer v. Payne & Sons Co., 115 Neb. 420, 213 W. 813 (1927)	14
rris v. Ballard, 16 F.2d 175 (D.C. Ark. 1926)	34
ely v. Broadstreet Nat'l Bank, 16 F.Supp.839 D.N.J. 1936)	32
lombi v. Volpe, 226 N.Y.S. 135 (Sup.Ct., App. v. 1927, <u>aff'd</u> 163 N.E. 607)	28
lik v. Goodman, 111 N.Y.S.2d 916 (Sup.Ct. 1952)	32

[The text in this block is extremely faint and illegible. It appears to be a list or a series of entries, possibly a table of contents or a list of items, but the specific content cannot be discerned.]

<u>Cases</u>	Page
erty Improvement Co. v. Under, 141 Md. 658, 119 Atl. 450 (Md.App. 1922)	31
senfield v. United States Trust Co., 290 Mass. 10, 195 N.E. 323 (1935)	12, 17
ven v. Miller, 168 Cal.App.2d 391, 335 P.2d 1035 (1959)	21, 22, 32
ockwell v. Lindeman, 229 Cal.App.2d 750, 10 Cal.Rptr. 555 (1964)	27
eting v. Campbell, 8 Ill.2d 54, 132 N.E.2d 523 (1956)	30
relle v. Templeman, 94 Mont. 149, 21 P.2d 60 (1933)	32
otter v. Lewis, 185 Md. 528, 45 A.2d 329 (1946)	34
lliams v. Manchester Building Supply Company, 13 Ga. 99, 97 S.E.2d 129 (1957)	31
ight v. Fred Heyden Industries, Inc., 6 Cal. Rptr. 392 (Cal.App. 1960)	23
ight v. Houdaille-Hershey Corp., 321 Mich. 21, 1 N.W.2d 845 (1948)	32

Secondary Authorities

A.L.R.2d 621 (1951) <u>Annotation</u>	11
A.L.R.2d 624 <u>Annotation</u>	12
A.L.R.2d 251 (1958) <u>Annotation</u>	31
Am.Jur., <u>Statute of Frauds</u> § 353 (1943)	10
Am.Jur., <u>Statute of Frauds</u> § 539	39
Am.Jur., <u>Vendor and Purchaser</u> , p. 508 § 39 (1946)	36
Corbin, <u>Contracts</u> § 273 (1963 ed.)	36
R.C.L., <u>Specific Performance</u> § 17	13
Williston, <u>Contracts</u> § 37 (1957 ed.)	13



Statutes and Rules

Page

Federal Rules of Civil Procedure 56

1

Chapter 190 Revised Laws of Hawaii 1955, as amended

10, 39

U.S.C. § 1964

41



UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LAHAINA-MAUI CORPORATION,)	
California corporation,)	
)	
Appellant,)	NO. 20419
)	
v.)	APPEAL FROM SUMMARY
)	JUDGMENT GRANTED BY
JOSEPH TAU TET HEW and HELEN)	THE UNITED STATES
MONA HEW, husband and wife,)	DISTRICT COURT FOR
MORRIS TAN and SHIZUKO RUTH)	THE DISTRICT OF HAWAII
, husband and wife,)	
)	Chief Judge Martin
Appellees.)	Pence
)	

BRIEF FOR APPELLEES

JURISDICTIONAL STATEMENT

Appellees concur in the jurisdictional statement
of the Appellant.

STATEMENT OF FACTS

On June 30, 1965, judgment was entered against
the Appellant on the Appellees' motion for summary judgment
under Rule 56 of the Federal Rules of Civil Procedure
(119-121). The court below found that there was no
genuine issue as to any material fact and stated in its
decision that it relied upon the language of the alleged
"Option to Lease", the Complaint, the Answers (presumably to
the Complaint and the Interrogatories), and the Notice of

STATE OF TEXAS

COMMISSIONERS OF THE LAND OFFICE

Section 1. That the land described in the following certificate, to-wit:

Section 2. That the land described in the following certificate, to-wit:

SECTION 2.

SECTION 3.

Section 4. That the land described in the following certificate, to-wit:

Exercise of Option of Lease for its decision (R:110).

Appellant did not file an opposing affidavit (R:120). The court below had before it the pleadings and exhibits attached thereto, the depositions of Paul T. F. Low and Philip H. Ching, and the Appellees' Answers to the Appellant's Interrogatories (R:120). Appellant's statement is incomplete and misleading, and therefore Appellees will review certain undisputed facts that were before the court below.

On February 14, 1963, the Appellees and the Appellant's predecessors in interest engaged in informal discussions in Lahaina, Maui, State of Hawaii, relating to the purchase of approximately 144,192 square feet of Maui beach property owned by the Appellees in Lahaina (R:2-3,44).

On the morning of February 15, 1963, the Appellees traveled to Honolulu for further discussions of the purchase and the possibility of leasing this Maui beach property (R:3,44,77, Dep.Ching p.4).^{1/} Appellees, not experienced in

Appellant states on page 3 of its Brief that on this date the negotiations were "completed for the lease". This is inaccurate, on the record, since the Appellees at no time have ever conceded that negotiations were ever completed to the extent that a meeting of the minds had been reached as to the terms and provisions of the proposed lease. However, on the present record, no genuine issue of any material fact arises because the court below, in effect, assumed for the purposes of its decision that negotiations were completed and that no contract resulted or could result from the alleged option and its alleged acceptance alone (R:105-107); A fortiori, if negotiations were not completed and there remained essential terms to be agreed on, then clearly the Appellees were entitled to summary judgment.

Faint, illegible text at the top of the page, possibly a header or introductory paragraph.

Second block of faint, illegible text, appearing to be a main body of the document.

Third block of faint, illegible text at the bottom of the page, possibly a conclusion or footer.

leasing of real property (R:92), were not represented by counsel at either of the meetings (R:80) although during the Honolulu meeting, the Appellant was represented by a member of the local bar (Dep.Ching p.2-8). It was this member of the bar (acting under the directions and instructions of the Appellant's predecessors in interest) who hurriedly drafted a paper entitled "Option to Lease" (R:3,44, Dep.Ching p.5,10).

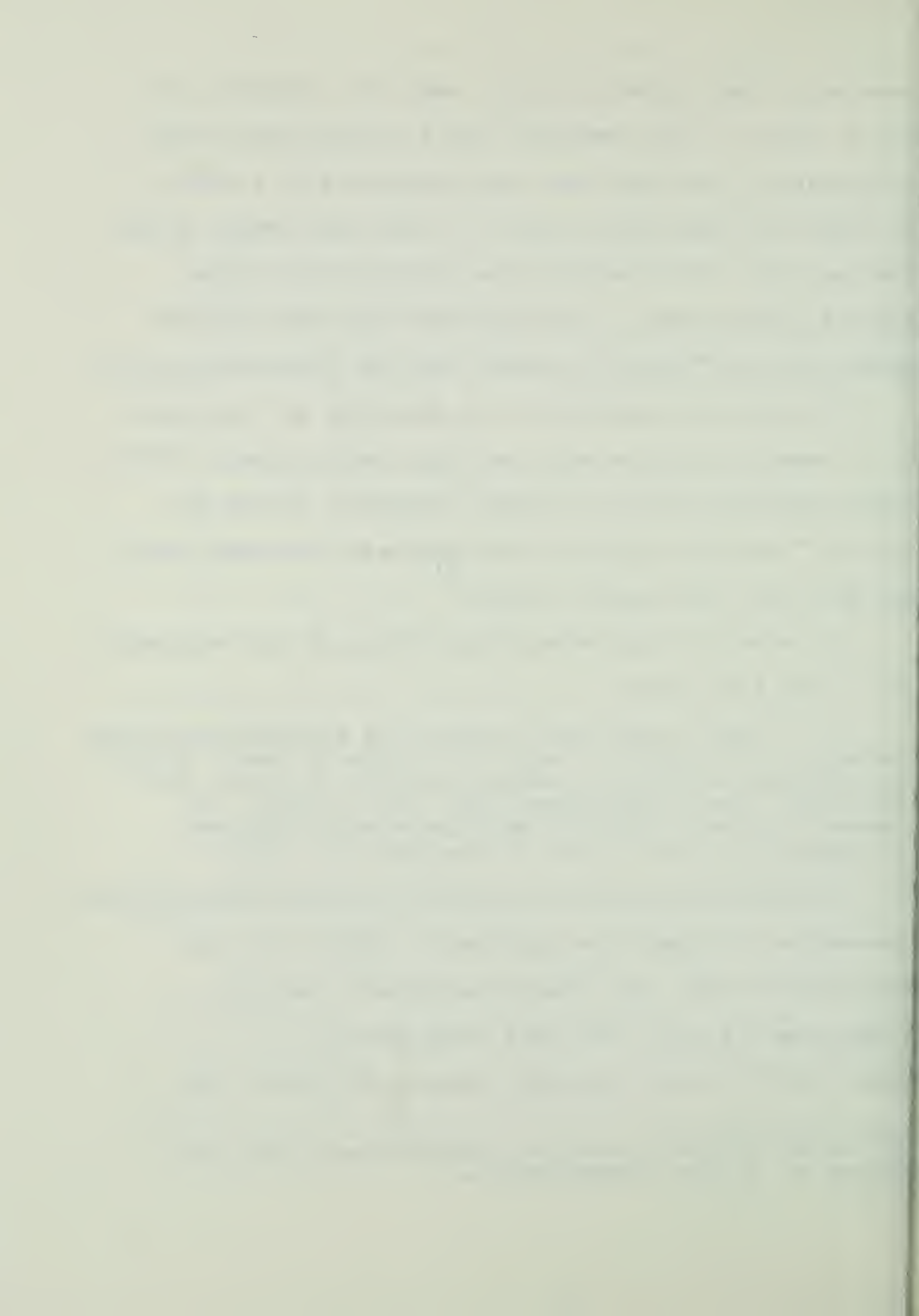
The document granted to the Appellant an "exclusive option to lease" the above mentioned Maui beach property (R:8). The Appellees understood that this grant prevented, during the term of the "exclusive option", the Appellees from negotiating a lease with any other person (R:84).^{1/}

An essential and material provision of the "exclusive option" is the following:

"Said lease shall contain the standard provisions normally contained in a lease for similar property situated in the State of Hawaii together with the provision that the Lessor shall subordinate their fee to permit the Lessee to obtain financing which provision is by way of example, but not by way of limitation." (R:9)

A proper subordination provision in the lease was basic and essential to enable the Appellant to obtain for the benefit of both lessor and lessee the proper financing for a proposed 2-3 story, 200 unit "combination apartment hotel" project costing between \$1,000,000 and

This is the obvious conclusion from the use of the word "exclusive" in the alleged option.



00,000 (Dep.Low p.9; Dep.Ching p.14,27,29). It was conducted by the attorney acting for the Appellant at the time of the negotiations, that a subordination provision in a Hawaiian lease is not a standard or usual provision (Dep. Ching p.7,16).

On April 22, 1963, the Appellees extended the term of the exclusive option to August 1, 1963 (R:4,44-45).

Between February 15, 1963 and July 25, 1963, a lease was prepared by Mr. Dwight Rush, a member of the Hawaii bar (Dep.Ching p.23). This lease was sent to California but never submitted to the Appellees (Dep.Ching p.23).

Prior to July 25, 1963, the Appellees hired Mr. Edward Mirikitani, a member of the Hawaii bar, as their attorney (R:80). On or about that date, Mr. Frank Nunes from California law firm of Nunes & Crews, Hayward, California, personally delivered to the law offices of Mr. Mirikitani an executed lease (R:13-36,85). This second lease contained provisions which are neither standard or usual provisions usually contained in Hawaiian leases (R:4-5,45). The proposed lessors named in this lease were the Appellees (R:13), and the proposed Lessee was the Appellant (R:13). The lease was for the same term mentioned in the alleged option (R:8,13), at the same annual rental (R:8,13-14) with, however, a provision requiring the Appellees to join in a mortgage or deed of

The California lease tendered by the Appellant describes the project as a "hotel or garden apartments" (R:24-25).

The first part of the document discusses the importance of maintaining accurate records and the role of the auditor in ensuring the integrity of the financial statements. It highlights the need for transparency and the potential consequences of misreporting.

The second part of the document details the various methods used to collect and analyze financial data, including the use of statistical techniques and the application of professional judgment. It emphasizes the importance of understanding the underlying business operations and the impact of various factors on the financial results.

The third part of the document focuses on the specific requirements and standards that govern the auditing process, including the need for independence and the adherence to established guidelines. It also discusses the role of the auditor in providing an objective assessment of the financial statements and the potential for legal action in the event of a breach of these standards.

The fourth part of the document concludes by summarizing the key findings and the overall importance of the auditing process in maintaining the trust and confidence of investors and other stakeholders. It reiterates the commitment to high standards of professional conduct and the ongoing effort to improve the quality of the auditing process.

st securing a loan in a sum not exceeding ninety per
t (90%) of the value of the land and improvements (R:22).
s lease contained an option to purchase (R:32-33) which
not mentioned in the alleged option yet apparently was
cussed on February 15, 1963 (Dep.Ching p.24).^{1/}

On July 26, 1963, the option was assigned to the
ellant (R:5,45) and on this same date the Appellant pur-
tedly exercised the alleged option by signing and
ivering to the Appellees a "Notice of Exercise of Option
Lease" (R:5,45).

On August 1, 1963, the alleged option expired
10).

On August 23, 1963, the Appellees formally advised
Appellant's local attorney that since no agreement had
n reached with the Appellant, the Appellees considered
alleged option null and void and tendered the "exclusive
ion" payment made by the Appellant (R:5,6-45).

On August 29, 1963, the complaint was filed
la-39). On September 11, 1963, the case was removed
the United States District Court for the District of
aii (R:40-42). On October 21, 1963, the Appellant filed
answer and counterclaim for specific performance (R:43-66).
exed to this counterclaim was a third proposed form of lease
pared by the Appellant (R:47-66). Appellant alleged that

Other examples of 'non-standard' provisions included in
this lease were an extension clause and an arbitration
clause (R:29-30,32).

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice. The second part outlines the procedures for handling discrepancies and errors, including the steps to be taken when a mistake is identified. The third part provides a detailed explanation of the accounting cycle, from identifying transactions to preparing financial statements. The fourth part discusses the role of internal controls in preventing fraud and ensuring the integrity of the financial data. The fifth part covers the requirements for external audits and the importance of transparency in financial reporting. The sixth part addresses the legal implications of financial misstatements and the consequences of non-compliance with accounting standards. The seventh part discusses the impact of technology on accounting practices and the need for continuous learning and adaptation. The eighth part provides a summary of the key points discussed throughout the document. The ninth part includes a list of references and sources used in the preparation of the document. The tenth part concludes with a statement of the author's commitment to accuracy and integrity in financial reporting.

s form of lease complied with the terms of the alleged
ion (R:46).

On October 25, 1963, the Appellant filed its first
ice of lis pendens (R:67-72). On November 16, 1964, the
ellees filed their amended reply setting forth the affir-
ive defense of the failure of all the documents to comply
h the Statute of Frauds, Chapter 190 Revised Laws of
aii 1955, as amended (R:96-98).

On January 5, 1965, the Appellees filed their
tion to Dismiss Counterclaim, or in the Alternative,
ion for Summary Judgment" (R:99-101). After the hearing
the motion the court below ruled orally on January 7,
5 that no contract to lease had been entered into because
the uncertainty and indefiniteness of its essential and
erial terms (R:105-109). On this same date, the Appellant's
orney offered in open court to waive the subordination
use (R:108) and after further briefing on the waiver
stion the court below on June 14, 1965 entered its written
ision granting the motion for summary judgment (R:114-118).

On June 30, 1965, judgment was entered which, among
er things, cancelled the lis pendens filed by the Appellant
October 25, 1963 (R:119-121). On the same date, the
ellant filed its notice of appeal (R:122-123) as well as
econd notice of lis pendens (R:124-129) which notice
s been subsequently cancelled by the court below by the
ision dated November 2, 1965.^{1/}

For the convenience of the court, the Decision is set forth
in Appendix A.

[The page contains extremely faint, illegible text, likely bleed-through from the reverse side of the document. The text is arranged in approximately 25 horizontal lines across the page.]

ARGUMENT

I

SUMMARY OF ARGUMENT

The alleged option to lease the Appellant seeks to enforce in this action includes the following paragraph:

"Said lease shall contain the standard provisions normally contained in a lease for similar property situate in the State of Hawaii together with the provision that the Lessor shall subordinate their fee to permit the Lessee to obtain financing which provision is by way of example, but not by way of limitation." (R:9)

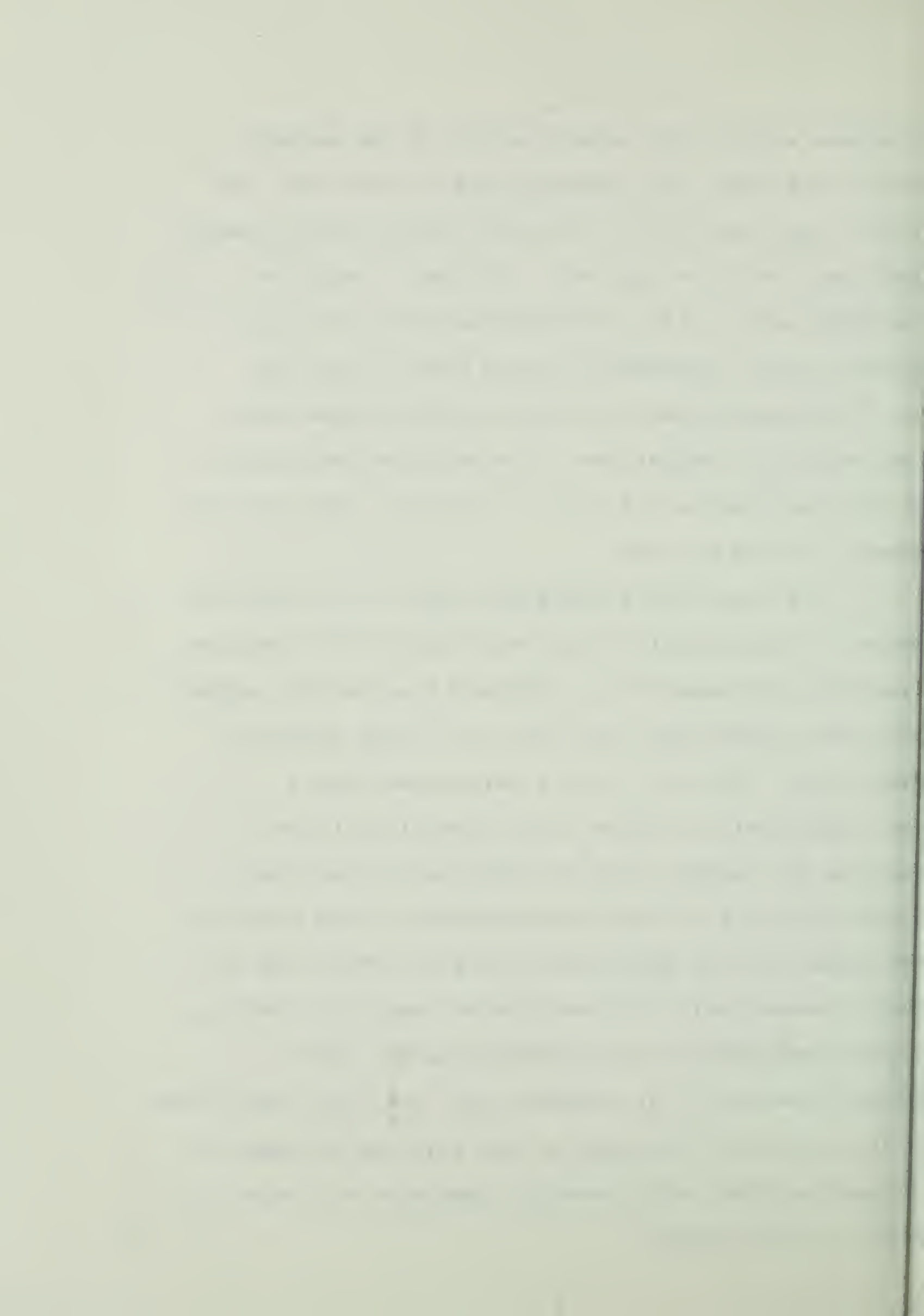
The meaning of the above language is that a provision that the Appellees would subordinate their simple interest in the real property described in the alleged option would be included in the lease together with other non-standard provisions not mentioned and to be negotiated.

The court properly held that the subordination clause as set forth in the option to lease is necessarily essential and material term thereof and as a matter of law the above subordination language is so vague, indefinite and uncertain that it renders the alleged option unenforceable. A subordination clause is



meaningless without the determination of the maximum amount of the loan, the interest rate of the loan, the period of the loan and the purpose to which the proceeds of the loan are to be applied. In order to enforce the alleged option with the subordination provision included, a court necessarily would have to include terms of the subordination provision which terms were not agreed to by the parties. The court below properly held that, as a matter of law, it could not make such an agreement for the parties.

The Appellant's contention that it is entitled to waive the subordination provision would still require the court's enforcement of a contract that was not agreed upon by the parties and this the court below properly refused to do. The court below determined that a proper subordination clause would benefit both the lessor and the lessee since the parties contemplated the construction of a completed structure on the premises to be leased and the magnitude of the structure and the lessor's reversionary interest therein were all tied to a properly negotiated subordination clause. The Appellant's waiver of an essential but not fully negotiated term of a contract furnishes no basis giving a remedy on an alleged contract which was not completed and hence not binding on either party.



SUBORDINATION CLAUSE

Appellant's principal contention is that the language . . . Lessor shall subordinate their fee to permit the Lessee obtaining financing . . ." is definite enough for specific performance of the alleged option because all this phrase means that the parties have agreed that the subordination of the appellees' fee interest will be without restrictions (Brief for appellant p.13).

This argument is invalid for two reasons: First,^{1/} Appellant has lifted this phrase completely out of the context from the rest of the sentence in which it is used, thereby torting the obvious meaning that a provision subordinating fee would be included in the lease along with other non-standard provisions not mentioned and yet to be negotiated,^{2/} Second, as a matter of law, the subordination language is vague, indefinite, and uncertain that it renders the alleged provision unenforceable. Necessary elements of a subordination clause are omitted, such as the maximum amount of the construction loan, the terms of the loan including when the loan would come due, the rate of interest it would bear and the manner which the loan would be paid.

Before discussing these arguments, the Appellees will review briefly the principles of law necessarily considered by the court below in its oral decision (R:105-107).

This argument begins on page 15 of this Brief.

See pages 17-31 of this Brief.

THE UNIVERSITY OF CHICAGO

PH.D. THESIS

THE UNIVERSITY OF CHICAGO

PH.D. THESIS

THE UNIVERSITY OF CHICAGO

PH.D. THESIS

THE UNIVERSITY OF CHICAGO

PH.D. THESIS

THE UNIVERSITY OF CHICAGO

PH.D. THESIS

THE UNIVERSITY OF CHICAGO

A. Statute of Frauds

If an option to lease is so indefinite and uncertain in its essential and material terms because future negotiations are contemplated between the parties, then under the Hawaii Statute of Frauds neither an action for specific performance nor an action for damages can be maintained.^{1/} It is a basic requirement of this Statute that the agreement must be sufficient, that is, the agreement must contain all the essential and material terms of the agreement.

The court below by deciding that the subordination language was vague and indefinite and could not be waived by one party because it was an essential and material term of the alleged option, concluded that as a matter of law the alleged option was insufficient under the Statute of Frauds.

49 Am.Jur. Statute of Frauds § 353 (1943), states the applicable principle:

"The general rule is that the memorandum, in order to satisfy the statute, must contain the essential

Chapter 190 Revised Laws of Hawaii 1955, as amended, provides in part:

"Certain contracts, when actionable. No action shall be brought and maintained in any of the following cases: . . .

"(d) Upon any contract for the sale of lands, tenements or hereditaments, or of any interest in or concerning them; . . .

"Unless the promise, contract or agreement, upon which such action is brought, or some memorandum or note thereof, is in writing, and is signed by the party to be charged therewith, or by some person thereunto by him in writing lawfully authorized."

THE UNIVERSITY OF CHICAGO
THE DIVISION OF THE PHYSICAL SCIENCES
DEPARTMENT OF CHEMISTRY

REPORT OF THE
COMMISSIONERS OF THE
UNIVERSITY OF CHICAGO
FOR THE YEAR 1900

CHICAGO
UNIVERSITY OF CHICAGO PRESS
1901

THE UNIVERSITY OF CHICAGO
THE DIVISION OF THE PHYSICAL SCIENCES
DEPARTMENT OF CHEMISTRY

CHICAGO
UNIVERSITY OF CHICAGO PRESS
1901

terms of the contract, expressed with such certainty that they may be understood from the memorandum itself or some other writing to which it refers or with which it is connected, without resorting to parol evidence."

The annotator in Annot., 16 A.L.R.2d 621 (1951), titled "Sufficiency of memorandum of lease agreement to satisfy the Statute of Frauds, as regards terms and conditions of lease" summarizes the general rule by stating:

"The parties must have reached final agreement upon all essential terms of a valid contract, without reservation of any such term for future negotiation, and those terms must be embodied in a writing.' In other words, the memorandum relied on to establish a lease agreement must embody all the essential and material parts of the lease contemplated to be thereafter executed with such clarity and certainty as to show that the minds of the parties had met on all material terms so as to effect a complete and valid lease, with no material matter left for future agreement or negotiation." (at 624)

Similarly, the court in 1130 President Street Corp. Bolton Realty Corp., 300 N.Y. 63, 90 N.Y.S.2d 50 (Ct. p.), 38 N.E.2d 16 (1949), states the rule:

"The requirements which this agreement must meet--that it may be enforced as a contract and satisfy the Statute of Frauds--are clear in theory and not peculiar to a contract for the lease of real property. The parties must have reached final agreement upon all essential terms of a valid contract, without reservation of any such term for future negotiation, and those terms must be embodied in a writing. . . ." (38 N.E. 2d at 18)

The answer to an anticipated argument that by the use of the words "essential terms", the courts simply mean agreement upon the property description, the term, the amount of rent, and the time and manner of payment, is

Faint, illegible text at the top of the page, possibly a header or title.

Main body of faint, illegible text, appearing to be several paragraphs of a document.

Second section of faint, illegible text, possibly a separate paragraph or section.

Final section of faint, illegible text at the bottom of the page.

e following comment by the same annotator in Annot.,

A.L.R.2d, at 624:

"And it should be particularly noted that although a memorandum may satisfy the statute by setting out with sufficient clarity all essential terms of a valid lease, if it goes further and shows that some other term or condition material to the lease, though not essential to a valid lease, has not been fully agreed upon by the parties but has been left for further negotiation or agreement, such additional matter may thereby render the memorandum insufficient under the statute."

e Hawaii Supreme Court in Francone v. McClay, 41 Haw. 72, -79 (1955), has recognized and adopted this view:

"Many authorities hold that there need be only a definite agreement as to the name of the parties to the lease, the extent and bounds of the property leased, a definite and agreed term, a definite and agreed price or rental, and the time and manner of payment. Where there are these essentials and no expectation of further provisions to be negotiated later, such a contract to lease is sufficiently definite for enforcement by a decree of a court of equity. . . .

"However, the important element in the cases purporting to set forth the so-called essential elements as being only the names of the parties, a description of the property to be leased, the amount of rental, the terms of payment, the term and duration of the lease, is that there is no expectation of further provisions to be negotiated later."

the same effect see:

Rosenfield v. United States Trust Co., 290 Mass. 210, 195 N.E. 323 (1935);

Blackmore-Danzig Co. v. Silsbee, 131 Misc. 340, 225 N.Y.Supp. 767 (Sup.Ct. 1927); and

H. M. Weill Co. v. Creveling, 181 App.Div. 282, 168 N.Y.S. 385 (1917), aff'd without op. 119 N.E. 1048.

First main paragraph of text, containing several lines of faint, illegible characters.

Second main paragraph of text, continuing the faint, illegible content.

Third main paragraph of text, consisting of multiple lines of very faint text.

Fourth main paragraph of text, appearing as a block of illegible characters.

Fifth main paragraph of text, with faint lines of text.

Sixth main paragraph of text, located near the bottom of the page.

B. An option to lease which is incomplete and uncertain cannot be specifically performed.

It is without dispute (1 Williston, Contracts § 37, . 107-111 (1957 ed.) that there cannot be an "offer" in the legal sense without sufficient definiteness thereof, so that upon acceptance a court is able to give the offer an exact meaning. Since by definition an option is merely an offer, an option cannot be accepted unless it contains "all the terms necessary for the required definiteness." (See numerous cases cited by Williston loc. cit.)

It therefore follows that contracts, which are complete and uncertain, are not capable of being specifically performed.

25 R.C.L., Specific Performance § 17, "Certainty of Contract Generally," states:

"One of the fundamental rules respecting the specific performance of contracts is that performance will not be decreed where the contract is not certain in its terms. The terms must be complete and free from doubt or ambiguity, and must make the precise act which is to be done clearly ascertainable. A decree of specific performance may be entered where the contract is certain and complete, or contains provisions which are capable in themselves of being reduced to certainty, and from which the intention of the parties can be clearly ascertained, but such a decree will be denied if some of the terms of the contract are indefinite and uncertain or are left open for future determination by the parties."

The Hawaii Supreme Court, in Francone v. McClay, 100 Haw. 100, recognized the general rule when it stated:

"There is little or no conflict of authority upon the general principle that where

REPORT OF THE
COMMISSION ON THE ORGANIZATION OF THE
DEPARTMENT OF CHEMISTRY
FOR THE YEAR 1960-1961

The Commission on the Organization of the Department of Chemistry was organized in 1959 to study the organization of the Department of Chemistry and to recommend changes that would improve its effectiveness in the future. The Commission has held several public hearings and has received many suggestions from faculty and students. The Commission's report is based on its own study and on the suggestions received.

The Commission has found that the Department of Chemistry is a large and diverse organization. It has many different areas of research and teaching. The Commission has found that the Department's organization is not well suited to its size and diversity. The Commission has recommended several changes that would improve the Department's organization. These changes include the creation of a new department, the reorganization of existing departments, and the creation of new positions.

The Commission believes that these changes are necessary for the Department to continue to be an effective and productive organization. The Commission has recommended that the Department be reorganized as follows:

- 1. The Department of Chemistry should be divided into two departments: the Department of Organic Chemistry and the Department of Inorganic Chemistry.
- 2. The Department of Organic Chemistry should be divided into three sections: the Section on Organic Synthesis, the Section on Organic Chemistry, and the Section on Physical Organic Chemistry.
- 3. The Department of Inorganic Chemistry should be divided into three sections: the Section on Inorganic Chemistry, the Section on Physical Inorganic Chemistry, and the Section on Bioinorganic Chemistry.
- 4. A new department, the Department of Physical Chemistry, should be created. This department should include the Section on Physical Chemistry, the Section on Physical Organic Chemistry, and the Section on Physical Inorganic Chemistry.
- 5. A new position, the Chair of Physical Chemistry, should be created. This position should be held by a faculty member who is interested in physical chemistry and who is capable of leading the Department of Physical Chemistry.
- 6. A new position, the Chair of Organic Chemistry, should be created. This position should be held by a faculty member who is interested in organic chemistry and who is capable of leading the Department of Organic Chemistry.
- 7. A new position, the Chair of Inorganic Chemistry, should be created. This position should be held by a faculty member who is interested in inorganic chemistry and who is capable of leading the Department of Inorganic Chemistry.

The Commission believes that these changes are necessary for the Department to continue to be an effective and productive organization. The Commission has recommended that the Department be reorganized as follows:

The Commission has found that the Department of Chemistry is a large and diverse organization. It has many different areas of research and teaching. The Commission has found that the Department's organization is not well suited to its size and diversity. The Commission has recommended several changes that would improve the Department's organization. These changes include the creation of a new department, the reorganization of existing departments, and the creation of new positions.

The Commission believes that these changes are necessary for the Department to continue to be an effective and productive organization. The Commission has recommended that the Department be reorganized as follows:

- 1. The Department of Chemistry should be divided into two departments: the Department of Organic Chemistry and the Department of Inorganic Chemistry.
- 2. The Department of Organic Chemistry should be divided into three sections: the Section on Organic Synthesis, the Section on Organic Chemistry, and the Section on Physical Organic Chemistry.
- 3. The Department of Inorganic Chemistry should be divided into three sections: the Section on Inorganic Chemistry, the Section on Physical Inorganic Chemistry, and the Section on Bioinorganic Chemistry.
- 4. A new department, the Department of Physical Chemistry, should be created. This department should include the Section on Physical Chemistry, the Section on Physical Organic Chemistry, and the Section on Physical Inorganic Chemistry.
- 5. A new position, the Chair of Physical Chemistry, should be created. This position should be held by a faculty member who is interested in physical chemistry and who is capable of leading the Department of Physical Chemistry.
- 6. A new position, the Chair of Organic Chemistry, should be created. This position should be held by a faculty member who is interested in organic chemistry and who is capable of leading the Department of Organic Chemistry.
- 7. A new position, the Chair of Inorganic Chemistry, should be created. This position should be held by a faculty member who is interested in inorganic chemistry and who is capable of leading the Department of Inorganic Chemistry.

The Commission believes that these changes are necessary for the Department to continue to be an effective and productive organization. The Commission has recommended that the Department be reorganized as follows:

a contract is complete and certain as to the essential and material terms, parts and elements of a lease, specific performance will be granted; nor if the contract to lease or the negotiations of the parties affirmatively disclose or indicate that further negotiations, terms and conditions are contemplated, the proposed lease is considered incomplete and incapable of being specifically enforced." (41 Haw. at 78)

Similarly, in Mercer v. Payne & Sons Co., 115

b. 420, 213 N.W. 813, 818 (1927), the court stated:

"The rule appears to be, as deduced from the authorities, that a court of equity will not enforce a contract, unless it is complete and certain in all its essential elements, and the parties themselves must agree upon the material and necessary details of the bargain, and if any of these be omitted, or left obscure or indefinite, so as to leave the intention of the parties uncertain respecting the substantial terms, the case is not one for specific performance. It is not the function of a court of equity to make a contract for the parties, or to supply any of the material stipulations thereof. If any of the essential details are wanting a chancellor will not supply them in a decree for specific performance. . . ."

C. Definiteness of the provisions of an option to lease is determined either on the date the option is exercised or the date suit is filed.

The applicable rule is stated by the court in

Leving v. Vandover, 240 Mo.App. 117, 218 S.W.2d 175, 179

(1949):

"Equity will determine the enforceability of a contract as to certainty, completeness and mutuality as of the date of demand for specific performance or at the time suit is filed rather than at an earlier date."

See also Heidner v. Hewitt Chevrolet Co., 166 Kan. 11, 199

2d 481 (1948).

Faint, illegible text at the top of the page, possibly a header or introductory paragraph.

Main body of faint, illegible text, appearing to be several paragraphs of a document.

A section of faint, illegible text, possibly a signature or a specific heading.

Another section of faint, illegible text, continuing the document's content.

- D. The proposed leasing agreement would have contained a subordination clause and other non-standard provisions.

By taking the phrase ". . . Lessor shall subordinate their fee to permit the Lessee to obtaining financing . . ." out of context and thereby excluding the modifying phrase "such provision is by way of example, but not by way of limitation", Appellant offers the tenuous argument that the parties merely intended an unrestricted subordination of the Appellees' fee interest (Brief for Appellant p. 13).

Because a subordination clause is not self-executing and requires creativity (see the subordination cases starting on page 20 of this Brief), the obvious and only logical construction to be given to this language of the alleged option that the lease would contain "standard provisions" and "non-standard" provisions, an example of a 'non-standard' provision being a subordination provision. Nor did the parties intend to place any limitations on the number of "non-standard" provisions. Other 'non-standard' provisions were intended and were expected to be negotiated during the life of the "exclusive option". The lease would just not be limited to a single 'non-standard' provision.

On or about July 25, 1965, Mr. Frank Nunes, the California attorney while in Honolulu, personally delivered to the Appellees' attorney lease drafted by the law offices of Nunes & Crews, 967 "B" Street, Hayward, California

Main body of faint, illegible text, appearing to be several paragraphs of a document.

:13,36,85). Although this lease contained, among others, provisions relating to an option to purchase, an extension and an arbitration clause, the alleged option is silent on these provisions. Thus, these provisions are either standard^{1/} or 'non-standard' provisions and in light of the appellant's admissions in its Answer that this lease contained provisions which were neither standard nor usual provisions normally included in Hawaiian leases (R:45), these provisions are obviously the 'non-standard' provisions.

Appellees' position is that on the motion for summary judgment the court below had only to consider if there was a genuine issue of material fact on whether the subordination clause tendered by Appellant (or any subordination clause) was or could be a standard provision "normally contained in a lease for similar property situate in the State of Hawaii". The court below could and did, in effect, take judicial notice that there is no such standard clause used in Hawaii (R:106) and the syntactical structure of the Appellant's own alleged subordination document supports, if it does not require this conclusion.

Francone v. McClay, 41 Haw. 72, at 82 (1955), suggests what are standard or the usual and stereotype provisions contained in a lease, naming provisions relating to the payment of taxes, insurance and other charges, etc., repair, maintain fences, sidewalks, sewerage, drains, observe the rules and regulations of the board of health, keep the premises in repair, not to assign or mortgage without the consent of the lessors, etc.

Faint, illegible text covering the majority of the page, likely bleed-through from the reverse side.

At the bottom of the page, there is a faint signature or name, possibly "John D. ...", and some illegible text below it.

The alleged option on its face not only required anticipated future negotiations between the parties on the "non-standard" provisions.^{1/} This being so, the alleged option cannot as a matter of law be the basis for a claim, since the court has nothing before it which in any manner resembles a completed agreement. Since the alleged option existed without the parties reaching an agreement on a lease, the court below quite properly rejected the task of creating de novo a leasing agreement for the parties (R:114-118).

E. As a matter of law, a subordination provision requires agreement on the conditions of the subordination.

Appellant irrelevantly argues that the court below has erred in entering judgment because the subordination clause contracted for is "clear, definite and unequivocal" and that the clause contracted for is "wholly without restrictions" (Brief for Appellant p. 13). In effect, the Appellant is arguing that the language of the option resulted in a contractual obligation on the part of the Appellees-lessors to allow a lien to be imposed on their fee simple title (1) for an indefinite amount, (2) at an indefinite interest rate, (3) payable over an indefinite period, (4) for indefinite financing

For cases showing that the tender of the lease in connection with an uncertain option is indicative of the necessity for additional negotiation as to material terms, see: Goldstine v. Tolman, 157 Wis. 141; 147 N.W. 7 (1914); McKnight v. Broadway Inv. Co., 147 Ky. 535, 145 S.W. 377 (1912), and Rosenfield v. United States Trust Company, 290 Mass. 210, 195 N.E. 323 (1935).

Faint, illegible text at the top of the page, possibly a header or introductory paragraph.

Main body of faint, illegible text, appearing to be several paragraphs of a document.

Faint text at the bottom of the page, possibly a signature, date, or footer.

poses, (5) unrestricted as to type, kind, size and purpose structure to be constructed, and (6) the proceeds of the financing from which subordination would be available without restrictions to the lessee for any purpose whatsoever. All as the Appellant, in effect, says is embraced within the lease "to permit the lessee to obtain financing".

To succeed in this contention, which would appear to be absurd on its face, Appellant would have to overcome two insurmountable obstacles: (1) Prove that this absurd meaning was intended by the language of the option [to do this counsel for the Appellant suggests that in some vague way by stating "in a court on two occasions that it would provide experts to testify at the trial of this matter that the clause had a definite and ascertainable meaning as it stood" (Brief for Appellant p.13), this amounted to an offer of proof of facts which precludes the entry of summary judgment], and (2) Satisfy the requirements of certainty of a contract. Appellant would have to prove that such a clause to be drafted and inserted in the 56 1/2 years lease was one of the "standard" lease clauses contracted for because it was contained in leases of similar property situated in the State of Hawaii". No genuine issue of fact is made out by this contention, and no trial is required by the rules of procedure to dispose of so tenuous a contention.

It should be noted that the testimony which the Appellant refers to in Francone v. McClay, 41 Haw. 72 (1955),



testimony merely as to what are "usual" clauses specially enforced in that case. There, the contract was for lease of income producing apartment property, with improvements in place. The concept of subordination of the fee simple lease for the purpose of "financing" was not in any manner involved.

If the vague language of the Appellant's Brief (p.13) intended to convince this court that an expert will be permitted to testify as to what the phrase ". . . Lessor shall subordinate their fee to permit the lessee to obtain financing . . ." means, Appellant is asking an expert to substitute his judgment on a matter of law for the judgment of the court below. If the Appellant intends to put on expert testimony to prove that the subordination clause in a lease contract is a standard clause [no such offer of proof appears on the record], Appellant is offering to prove something which the court below judicially noticed could not be proven and which this court on present record will not disturb.

Appellant mistakenly relies as "squarely in point" McCarty v. Harris, 216 Ala. 265, 113 So. 233 (1927). In that case, purchasers of real property filed a bill in equity to require the sellers to sell and convey property. The contract contained the statement that the purchasers may put a first mortgage on the property. The seller appealed the denial of a demurrer, contending, among other things, that the contract was rendered uncertain because the contract did not specify the amount of the first mortgage. The court

[The page contains extremely faint, illegible text, likely bleed-through from the reverse side of the document. The text is arranged in approximately 25 horizontal lines across the page.]

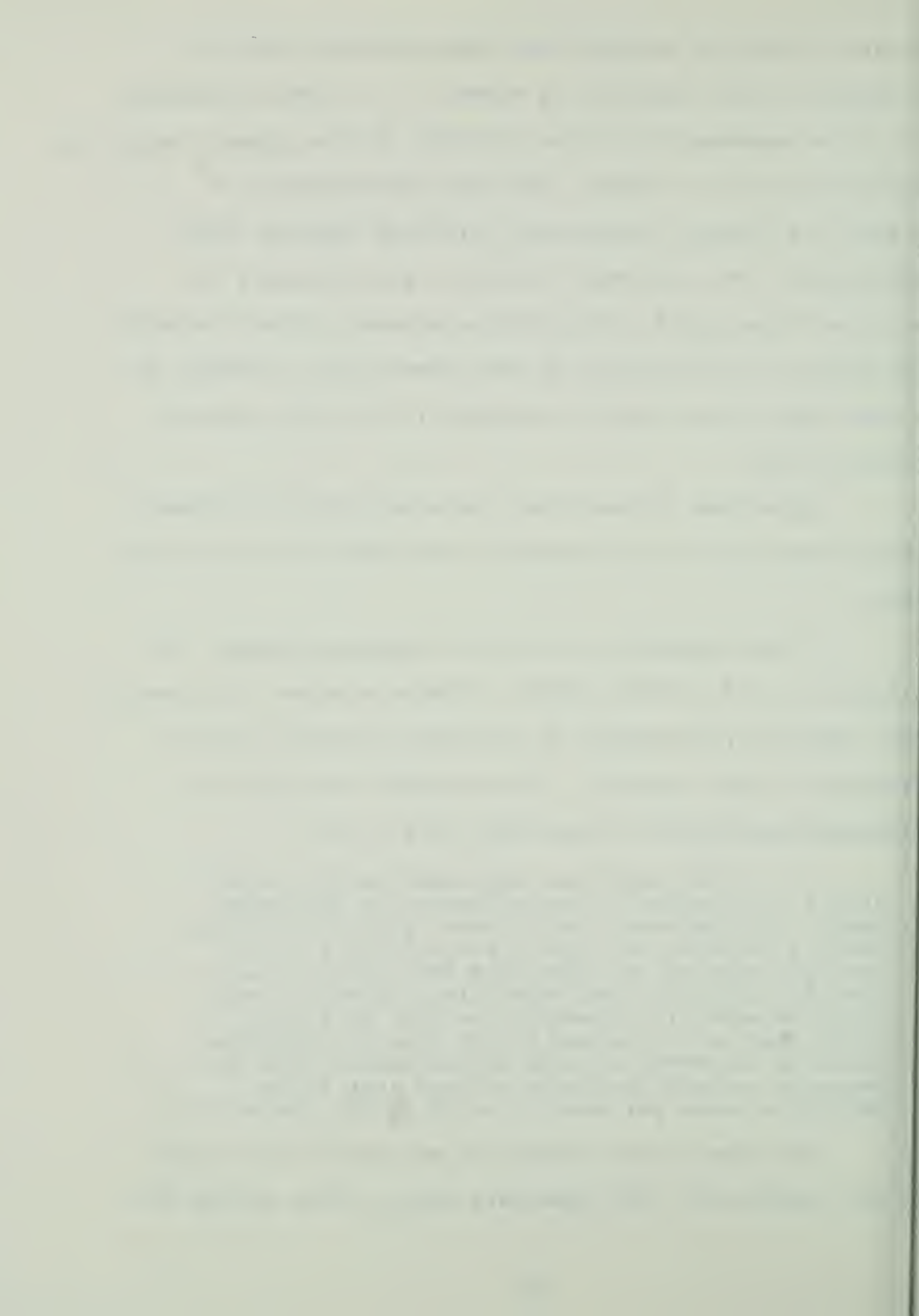
posed of this by holding that that provision was not
the essence of the contract to convey ". . . a mere subsidiary
part of the agreement" (113 So. at 234). In the present case, the
court below held, in effect, that the subordination of
the fee in a leasing transaction involving Lahaina, Maui
each property was extremely essential and necessary for
the proper financing for the hotel-apartment project as well
as protection for the value of the reversionary interest of
the Appellees, their heirs or assigns (R:105-106, and see
p. Low p. 9, 12).

Appellees contend that the subordination language
of the alleged option is uncertain and indefinite as a matter
of law.

A case squarely on point is Gould v. Callan, 127
1.App.2d 1, 273 P.2d 93 (1954). There, a buyer of property
sought specific performance of a written contract for the
conveyance of real property. The contract contained the
following subordination clause (273 P.2d at 94):

"The 2nd Trust Deed mentioned on page 1
hereof to provide for subordination on following
basis: In the event the trustor [plaintiff] should
erect a building on subject property at a total
building cost of not less than \$75,000.00 or more
than \$300,000.00, then Beneficiary agrees to sub-
ordinate said Trust Deed to the lien of a first
trust deed not to exceed 60% of the true building
cost. In the event of such subordination then the
payments on said Second Trust Deed loan to be
\$400.00 or more per month, including 5% interest."

The lower court found that provision to be uncer-
tain and indefinite. The appellate court, after citing the



general rules relating to definiteness, stated:

"The subordination provision is incomplete in its statement of the obligation to be secured by the first deed of trust. It is silent as to the amount of interest, the length of time it is to run, and the terms of payment. Gardner, a realtor who represented defendant in the transaction, testifying in behalf of plaintiff, stated that at the time the escrow instructions were executed it was understood the subordination agreement would be prepared at a subsequent date by defendant's attorney and he was to approve its final form; the length of time the new first deed of trust would be on had not been previously discussed; the terms and conditions were to be prepared in a form which would be acceptable to and insurable by the Los Angeles Title & Trust Company.

"If something is reserved for the future agreement of both parties, the promise can give rise to no legal obligation until such future agreement. Since either party, by the very terms of the promise, may refuse to agree to anything to which the other party will agree, it is impossible for the law to affix any obligation to such a promise. . ." (273 P.2d at 95)

The court concluded by stating:

"The failure of the subordination clause to state the amount of interest and the terms and conditions of payment of the obligation to be secured by the first deed of trust makes the contract uncertain and indefinite. The provisions are material and essential to a contract providing for a deed of trust as security for an obligation, and their absence is fatal to the claim for specific performance. The indefiniteness, uncertainty, and absence of all of the indicated material and substantial terms of the alleged contract justified the trial court in denying specific performance." (273 P.2d at 96)

The next case following Gould v. Callan was Roven Miller, 168 Cal.App.2d 391, 335 P. 2d 1035 (1959). This was also an action for specific performance of a contract for the sale of real property. The "Purchase Option Contract", long and detailed in many respects, was set forth in toto in footnote 1 appearing on pages 1037 and 1038. That

Faint, illegible text covering the page, possibly bleed-through from the reverse side.

portion of this contract referring to a subordination

clause was (335 P.2d at 1038):

""This Deed of Trust will be subordinate to a First Deed of Trust to secure a construction loan which will be placed upon the property by the Trustor, or his successors and assigns, given to a recognized Savings and Loan Association or bank for the purpose of securing a loan to be used for the construction of residences and improvements on said property. Beneficiary will issue a partial reconveyance for any specific lot number covered by this Deed of Trust upon the payment to the beneficiary of a sum equal in proportion to the number of lots secured by the Deed of Trust to the original amount of the note secured hereby plus 20% for each lot reconveyed. When the balance of the note secured by this Deed of Trust has been paid in full, beneficiary will issue a full reconveyance for the property still covered by the lien of this Deed of Trust.""

Notwithstanding the extensive details provided in the Purchase Option Contract, the appellate court upheld the lower court's finding that the contract was indefinite, incomplete and uncertain because of the subordination clause, relying primarily upon Gould v. Callan.

The court's holding was as follows (335 P.2d at 1040-41):

"In the instant case the subordination clause contained in the purchase option contract does not state the amount of the construction loan which would be placed on the property, nor any of its terms, nor when said construction loan would become due, nor the rate of interest that it would bear, nor the terms or conditions of the first deed of trust to secure said construction loan. These provisions are material and essential to a contract providing for a deed of trust as security for an obligation and their absence justified the trial court in denying specific performance of the contract."

One month after the Roven case, the California appellate court was confronted again with a subordination problem in Kessler v. Sapp, 169 Cal.App.2d 819, 338 P.2d 34

in the study of the history of the United States. The author, [Name], is a leading authority on the subject. The book is a comprehensive survey of the field, covering the period from the early colonial days to the present. It is written in a clear and concise style, and is suitable for both students and general readers. The book is divided into several parts, each dealing with a different aspect of the history. The first part deals with the early colonial period, the second with the Revolutionary War, and the third with the period of westward expansion. The fourth part deals with the Civil War and Reconstruction, and the fifth with the period of the Gilded Age and the Progressive Era. The book is well illustrated with maps and photographs, and includes a bibliography and an index. It is a valuable addition to any library or collection of books on the history of the United States.

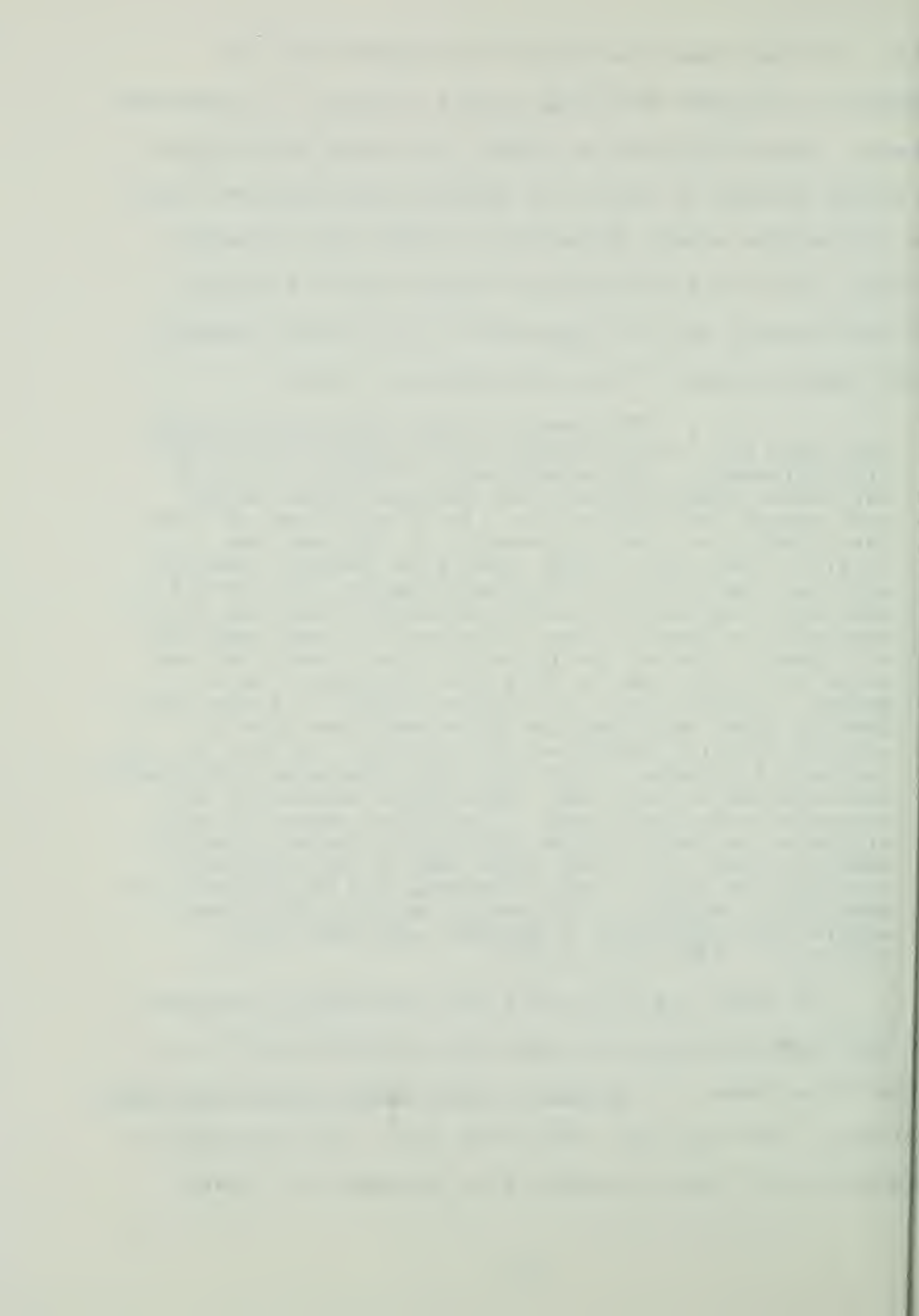
The author's approach is to provide a broad overview of the history, rather than a detailed study of any one aspect. This makes the book a good starting point for further study, and also a useful reference work. The book is written in a clear and concise style, and is suitable for both students and general readers. It is well illustrated with maps and photographs, and includes a bibliography and an index.

The book is a valuable addition to any library or collection of books on the history of the United States. It is written in a clear and concise style, and is suitable for both students and general readers. It is well illustrated with maps and photographs, and includes a bibliography and an index. The author's approach is to provide a broad overview of the history, rather than a detailed study of any one aspect. This makes the book a good starting point for further study, and also a useful reference work.

959). In that case, the buyers had entered into an agreement to purchase from the sellers a parcel of unimproved property. Upon the latter's refusal to convey the property, the buyers brought an action for specific performance, whereupon the sellers sought declaratory relief and a quieting title. The court affirmed the lower court's finding that the contract was too uncertain to be binding because of the indefiniteness of the subordination clause:

" . . . The Deed of Trust securing the above described Note shall contain the following Subordination Agreement: The Beneficiary on behalf of his or her heirs, administrators and assigns hereby agree and consent that during the life of said Deed of Trust the Trustors or their successors in interest may obtain a loan from a Bank, Insurance Company, Savings and Loan Association or Mortgage Company, securing a note for construction and/or permanent financing to be secured by a deed of trust which will be and remain at all times a lien on the property herein described and superior to the lien of this deed of trust. As a matter of record only, the Seller agrees to accept the Deed of Trust securing the above described Note on subject property described as individual parcels or lots instead of acreage if the buyer has completed subdivision and obtained correct legal description describing the property by Lot and Tract. The Seller agrees to subordinate the Deed of Trust which will become a second deed of trust to a first trust deed to be filed concurrently or after close of escrow, and said first trust deed not to exceed in the amount equal to \$6.50 per square foot exclusive of garages, stairways and porches." (338 P.2d at 36)

In 1960, the California court was again concerned with the indefiniteness of a subordination provision in an agreement to purchase. In Wright v. Fred Heyden Industries, Inc., Cal.Rptr. 392 (Cal.App. 1960), the court, in responding to the question of indefiniteness of an agreement to convey



sed for the first time on appeal, held the following sub-
ordination provision to be indefinite (6 Cal.Rptr. at 393-
):

"The trust deed hereinabove provided for' the contract continued 'shall contain provisions permitting Buyer to subordinate and Owner agrees that the trust deed may, at the option of Buyer, be subordinated to loans for the purpose of improving the property covered by said deed of trust by the subdivision thereof and the construction on the lots produced as a result of such subdivision of houses and related improvements and shall further provide that upon the sale of each house and lot thus produced and improved, Owner will promptly, upon the request of Buyer, place in the escrow in which such house and lot is being sold by Buyer to a third person, a partial release of said deed of trust, which partial release shall remove from said house and lot the lien of such deed of trust, together with instructions to said escrow that such partial release may be delivered to the purchaser of such house and lot upon said escrow being able to deliver to Owner a sum equal to the full amount of the note of Buyer as hereinbefore described divided by the number of lots produced by the subdivision of the usable part thereof by Buyer.'" "

The court held (6 Cal.Rptr. at 394):

"It will be noted that nowhere in the provisions quoted--and, we add, in no part of the contract not quoted--is there any statement made as to the maximum amounts of the loans, the lengths of time they may be made to run, in what manner they are to be paid, what, if any, interest they are to bear, or as to other conditions of importance in determining to what burdens the property being sold and scheduled to be held in trust to secure the buyer's obligation to the seller, is to be subjected. Provisions of subordination striking similar to the above, were under review in two fairly recent cases decided by this court: *Could v. Callan*, 1954, 127 Cal.App.2d 1, 273 P.2d 93 and *Kessler v. Sapp*, 1959, 169 Cal.App.2d 818, 338 P.2d 34. . . ."

In *Conely v. Fate*, 227 Cal.App.2d 418, 38 Cal.Rptr.

(1964), the court held that a deposit receipt which implied
at a purchase money trust deed would be subordinated to a

REPORT OF THE
COMMISSIONERS OF THE
LAND OFFICE
FOR THE YEAR
1887

The following is a list of the lands owned by the State of Illinois, as of the 1st day of January, 1887, and the amount of the taxes thereon for the year 1886. The lands are classified according to their location, and the amount of the taxes is given in dollars and cents.

Location	Amount of Taxes
Adams County	\$1,234.56
Adair County	\$2,345.67
Adams County	\$3,456.78
Adair County	\$4,567.89
Adams County	\$5,678.90
Adair County	\$6,789.01
Adams County	\$7,890.12
Adair County	\$8,901.23
Adams County	\$9,012.34
Adair County	\$10,123.45

The following is a list of the lands owned by the State of Illinois, as of the 1st day of January, 1887, and the amount of the taxes thereon for the year 1886. The lands are classified according to their location, and the amount of the taxes is given in dollars and cents.

Location	Amount of Taxes
Adams County	\$1,234.56
Adair County	\$2,345.67
Adams County	\$3,456.78
Adair County	\$4,567.89
Adams County	\$5,678.90
Adair County	\$6,789.01
Adams County	\$7,890.12
Adair County	\$8,901.23
Adams County	\$9,012.34
Adair County	\$10,123.45

ilding loan was uncertain because the receipt did not
ate what type of structure or structures would be con-
ructed on the property or the amount of the building loan,
ying on Gould v. Callan.

A recent decision on a subordination provision
Maona Development Company v. Reed, 228 Cal.App.2d 230,
Cal.Rptr. 284 (1964). There, the court was involved
th the identical question and procedure for raising that
estion which confronted the court below. The question on
deal was whether the lower court was justified in granting
otion for summary judgment. This, in turn, raised the
estion "whether a subordination clause in an agreement for
e sale of real property is uncertain as a matter of law"
Cal.Rptr. at 286). The appellate court affirmed the
cision of the lower court stating that (39 Cal.Rptr. at 290):

"[W]hen something is reserved for future
agreement [terms of the subordination clause] of
both parties, the promise [to include the clause]
can give rise to no legal obligation until such
future agreement. 'Since either party, by the very
terms of the promise, may refuse to agree to anything
to which the other party will agree, it is impossible
for the law to affix any obligation to such a promise.'"

It makes no difference whether the option refers
the purchase or leasing of real property, or whether the
tter is decided outside of the State of California. The
w York court, in Kusky v. Berger, 225 N.Y.S.2d 797 (1962),
aff'd without opinion, 249 N.Y.S.2d 858 (Sup.Ct., App.Div.



64), was concerned with an action seeking specific performance of an agreement to lease containing a subordination clause. There, as here, was an agreement or option to lease real property. Although the court does not set forth in its opinion the exact language of the subordination clause, the court stated:

" . . . It [agreement to lease] further obligates the Lessor to subordinate the said property to a first mortgage lien to be obtained by the Lessee in an amount not exceeding specified percentages of the cost of the building depending on the maturity date of the mortgage and sets forth elaborate provisions for refinancing and ultimate termination of all real estate mortgages not later than 14 years preceding termination of the lease. It requires that any mortgage to which the lease is to be subordinated be obtained 'from a banking or Savings & Loan Association or insurance institution licensed to do business in the State of New York.' It requires that all 'mortgages after the first refinancing must be fully self-liquidating', but makes no provision at all concerning interest rate of any mortgage." (225 N.Y.S.2d at 798)

The lessees brought an action for specific performance and were met with a motion to dismiss by the lessor on the ground of legal insufficiency of the complaint. In granting the motion to dismiss, the following portion of the court's opinion is pertinent, as well as support for the decision of the court below (225 N.Y.S.2d at 799):

"The 'material element' omitted in Willmott was the interest and amortization to be provided in the purchase money mortgage. While no New York case has been found dealing with interest in a subordination clause, as distinct from interest in a purchase money mortgage, as the missing element, the interest rate of a mortgage to which a lease is to be subordinated would have material bearing on the lessee's ability to carry on his business, and must be

...

...

...

...

...

considered a 'material element,' Gould v. Callan, 127 Cal.App.2d 1, 273 P.2d 93. True, in the purchase money mortgage cases, the courts will imply that interest is at the legal rate and that the mortgage is to be payable on demand, . . . or that the mortgage is to have the same interest rate and maturity date as an existing one, . . . unless the parties by expressly leaving such missing elements to negotiation negate such implication or inference, . . . On the facts of the present case there can be no such implication or inference, however, for the mortgage is to be obtained by plaintiff or his assigns from a banking or insurance institution, a totally different situation, of course, from that of a seller taking back a purchase money mortgage. Were plaintiff's assignee a corporation, as is the normal practice in real estate transactions, there would be no legal limit on the rate of interest, . . . Having both omitted the interest rate from the subordination clause and included a right of assignment by plaintiff, the parties have created an hiatus making a specific performance decree impossible." [citations omitted]

The applicable principle of law emerging from the foregoing decisions ^{1/} and adhered to by the court below in its oral decision (R:105-107) is that whenever an agreement refers to subordination the terms and conditions of the subordination clause set forth in the option must be spelled out in complete and extensive detail if there is to be a binding and enforceable agreement between the parties. Accordingly,

Appellant's futile attempt to distinguish the California cases is based on a claim that the cases turn on a California statutory provision that a purchaser of property has no personal liability under a purchase money mortgage. This point has never been raised or relied on in any of these California cases even though the courts are repeatedly confronted with the subordination cases. The minimum requirements of a subordination clause would appear to be, at least, agreement upon the maximum amount of the construction loan both as to principal and interest and a reference to what terms would be required by the lender. See Stockwell v. Lindeman, 229 Cal.App.2d 750, 40 Cal.Rptr. 555 (1964).

[The text on this page is extremely faint and illegible. It appears to be a multi-paragraph document, possibly a letter or a report, but the specific content cannot be discerned.]

e court below properly held the subordination language
the present action to be uncertain, vague, and indefinite,
d thus incapable of being specifically enforced or the
sis for an action for damages.

Appellees offer the following cases to demon-
strate the rationale and reasonableness of the principle of
w recognized in the foregoing cases. The cases that the
pellees could offer in support of the rationale of the
al decision of the court below are almost numberless.

H. M. Weill Co. v. Creveling, 168 N.Y.S. 385
up.Ct., App.Div. 1917) aff'd 119 N.E. 1048 . The court
ld a memorandum vague which provided for rent at a given
ntal and then rent for "11 years at a reappraisal of 5 per
cent" on the grounds that the language underscored did not
dicate what was to be reappraised. The court also held
ertain language to improve the property to the extent of
less than \$10,000.00 as indefinite and uncertain because
ere was nothing to show when this expenditure would be
de or the character of the improvement.

Palombi v. Volpe, 226 N.Y.S. 135 (Sup.Ct., App.
v. 1927, aff'd 163 N.E. 607). There, the court held that
essential term had been left open for further negotiations
a provision in an alleged contract to lease which pro-
ded for "an opening or passway through the hall of the
use." The court held this language was too indefinite
constitute an agreement because it was impossible to tell

[The text on this page is extremely faint and illegible. It appears to be a multi-paragraph document, possibly a letter or a report, with several lines of text visible but not readable.]

ere the opening was to be located.

Gordon v. Siegel, 125 N.Y.S.2d 862 (Sup.Ct.),
modified on other grounds, 132 N.Y.S.2d 437 (1953). In that case a
memorandum of an agreement for the leasing of property
referred to the construction of a supermarket building.
The court held this provision indefinite and indicating
the necessity of further negotiations between the parties as
to the size, specifications and the cost of the building.
The court further held that the type and size of the structure
were material since the structure was to revert to the lessor
at the end of the term of the lease.

American Mining Co. v. Himrod-Kimball Mines Co.,
4 Colo. 186, 235 P.2d 804 (1951). In that case, the court
held a contract incomplete which provided for the payment of
royalties of certain percentages of the net return on grounds
but the agreement did not state the method of calculating
such percentages or the time or manner of payment.

Colorado Corp. v. Smith, 121 Cal.App.2d 374, 263
2d 79 (1954). There, the court held a provision in a
contract relating to the construction of certain residences
too vague and uncertain making the entire contract unen-
forceable in equity. The exact language in the agreement
which was uncertain was "the buyer herein agrees to construct at
such time as he chooses residences of not less than 1200
square feet, each on the parcels facing on Gault Street."
263 P.2d at 80)

Chatham-Trenary Land Co. v. Swicart, 220 Mich.

The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that this is essential for ensuring transparency and accountability in the organization's operations.

Furthermore, it highlights the need for regular audits and reviews to identify any discrepancies or areas for improvement. This process should be conducted in a systematic and thorough manner to ensure the integrity of the data.

In addition, the document outlines the various methods and tools used for data collection and analysis. It mentions the use of spreadsheets, databases, and specialized software to facilitate the process and ensure accuracy.

It also discusses the importance of data security and privacy, particularly in light of the increasing reliance on digital information. Appropriate measures should be taken to protect sensitive data from unauthorized access and breaches.

The document concludes by reiterating the significance of data management in achieving organizational goals and maintaining a competitive edge. It encourages a proactive approach to data handling and a commitment to continuous improvement.

Overall, the document provides a comprehensive overview of the data management process, from data collection to analysis and reporting. It serves as a valuable resource for anyone involved in organizational data management.

The following sections provide detailed information on the specific steps and procedures involved in each stage of the data management process. This includes guidelines for data entry, storage, and retrieval, as well as best practices for data analysis and reporting.

By following these guidelines, organizations can ensure that their data is accurate, secure, and readily accessible. This will enable them to make informed decisions and optimize their performance in the long run.

The document also includes a list of recommended resources and tools for further exploration and learning. These resources are designed to provide additional support and guidance for those interested in data management.

It is important to note that the information provided in this document is intended as a general guide and should be adapted to the specific needs and circumstances of each organization. Regular updates and revisions may be necessary to keep the information current and relevant.

We hope that this document has been helpful and informative. If you have any questions or feedback, please do not hesitate to contact us. We are committed to providing high-quality information and support to our readers.

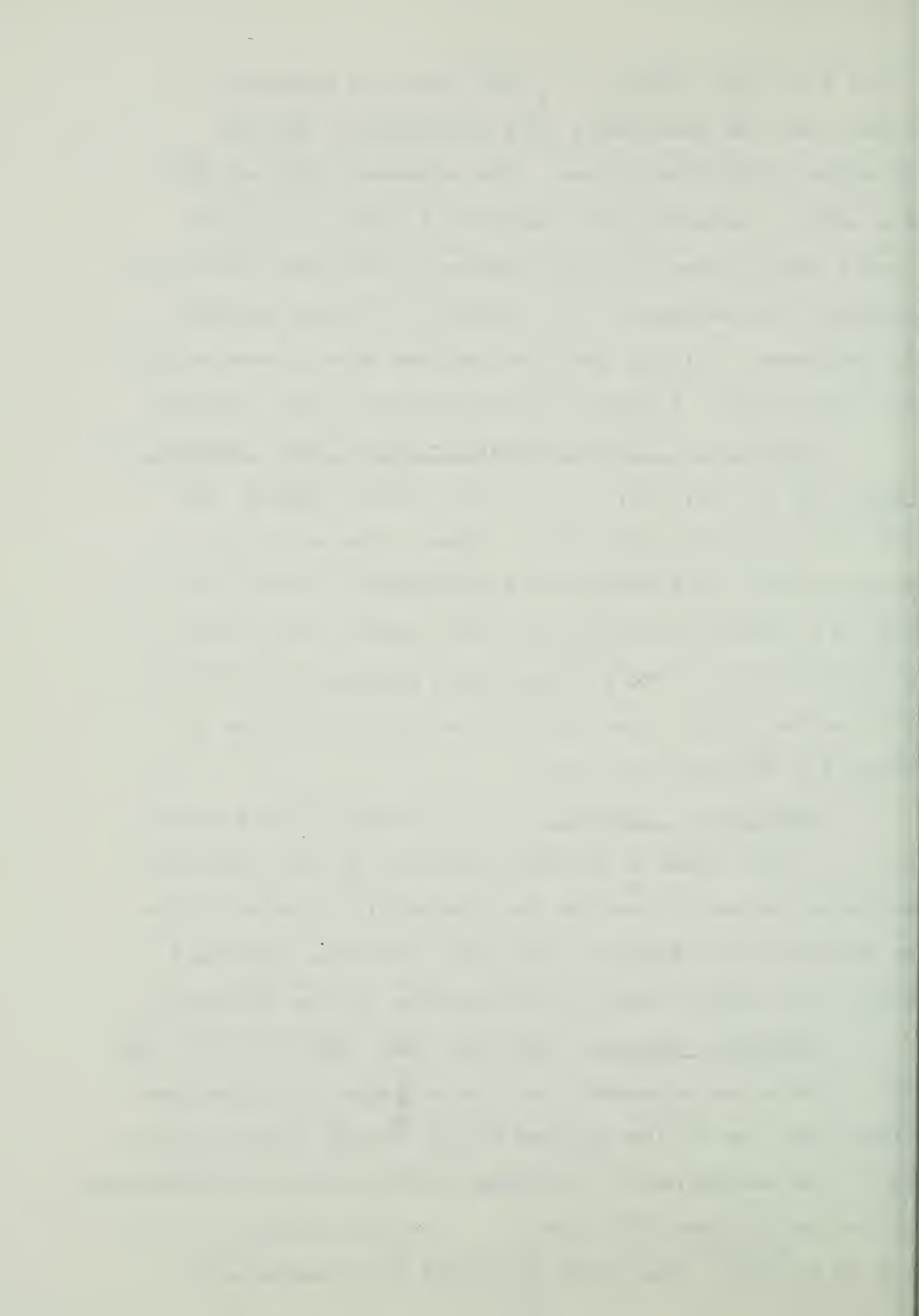
Thank you for your interest in data management. We look forward to continuing our efforts to provide valuable insights and resources to the community.

, 189 N.W. 1000 (1922). In that case, an agreement provided that the defendants were obligated to pay for 1000 acres of land each year. The agreement did not provide a way for selecting the parcels of land to be sold. The court denied specific performance on the basis that such a provision was ambiguous and incapable of being specifically performed, holding that the parties should have stated clearly the manner of executing provisions of the contract.

Andreula v. Slovak Gymnastic Union Sokol Assembly, 140 N.J. 223, 138 N.J. Eq. 260, 47 A.2d 878 (1964), aff'd, 140 N.J. Eq. 171, 53 A.2d 191 (1947). There, the court, in denying specific performance of an agreement, held a provision in a lease providing that "the tenant herein shall have the first option to purchase said premises" (47 A.2d 878) as being too uncertain for failing to provide a standard for determining price.

Sweeting v. Campbell, 8 Ill.2d 54, 132 N.E.2d 523 (1956). In that case, a contract relating to the financing of a mortgage failed to provide for the maturity dates of the first and second mortgages. The court held the agreement uncertain and denied specific performance of the contract.

Howard v. Beavers, 128 Colo. 541, 264 P.2d 858, 859 (1954). There, an agreement for the exchange of properties provided that one of the parties would "convey back unto the party of the second part a mortgage on the property hereinabove described as the East 120 acres . . . for \$14,800.00 . . ." (264 P.2d at 859). The court held that this language of



the contract concerning the terms of the mortgage made
the contract incomplete and therefore unenforceable.

To the same effect see:

Realty Improvement Co. v. Unger, 141 Md. 658,
119 Atl. 450 (Md.App. 1922);

Williams v. Manchester Building Supply Company,
213 Ga. 99, 97 S.E.2d 129 (1957); and

Cases cited in Annot., 60 A.L.R.2d 251 (1958).

III

WAIVER

Appellees have shown that the subordination pro-
vision is an essential and material term of the alleged
option to lease and that the uncertainty of the clause
renders the alleged option invalid and unenforceable as a
matter of law. The Appellant argues that if the subor-
dination provision is uncertain, the Appellant is entitled
to "waive" the provision thus eliminating both the subor-
dination provision and the resulting uncertainty from the
alleged option.

In Magna Development Company v. Reed, 228 Cal.App.
3d 230, 39 Cal.Rptr. 284 (1964) (discussed at 25, supra),
the court was faced with the uncertainty of a subordination
provision in a purchase agreement coupled with willingness
of one of the parties to waive this provision in an attempt
to enforce the purchase agreement (The waiver was actually
set forth in the counteraffidavit of the plaintiff to

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice. This not only helps in tracking expenses but also ensures compliance with tax regulations. The document further outlines the procedures for handling discrepancies and the role of the accounting department in providing timely reports to management.

In the second section, the focus is on budgeting and financial forecasting. It details how the budget is prepared and how it is used to monitor the company's financial performance against its goals. The document also discusses the various factors that can affect the budget and the strategies used to manage these risks.

The third part of the document covers the internal control system. It describes the various controls in place to prevent fraud and ensure the integrity of the financial data. This includes the segregation of duties, the approval process for transactions, and the regular audits conducted by the internal audit department.

Finally, the document concludes with a summary of the key points and a call to action for all employees to adhere to the financial policies and procedures outlined in the document. It stresses that everyone has a role to play in maintaining the financial health of the organization.

defendant's motion for summary judgment and supporting affidavit). The court held as follows (39 Cal.Rptr. at 293):

"Plaintiff also argues that even if the subordination clause is uncertain as a matter of law, it has eliminated the uncertainty by waiving the benefit of the clause. . . . The attempted waiver is ineffective for two reasons. . . . Secondly, if a party were permitted to waive defective provisions going to the essence of a contract, the court, in effect, would be allowing the unilateral creation of a new, different contract. A party to a contract cannot erase uncertainty therefrom by waiving such uncertainty and thereby restore its contractual validity."

Similarly, in Roven v. Miller, 168 Cal.App.2d 391, 335 P.2d 1035 (1959) (discussed at 21, supra), where the optionee attempted to cure the defect of an indefinite subordination provision by waiver of the provision, the court held that the option had expired prior to the offer of waiver (335 P.2d at 1041). Appellant does not cite any case involving the waiver of an uncertain subordination provision.

One group of cases^{1/} (hereinafter called

Neely v. Broadstreet Nat'l Bank, 16 F.Supp. 839 (D.N.J. 1936);

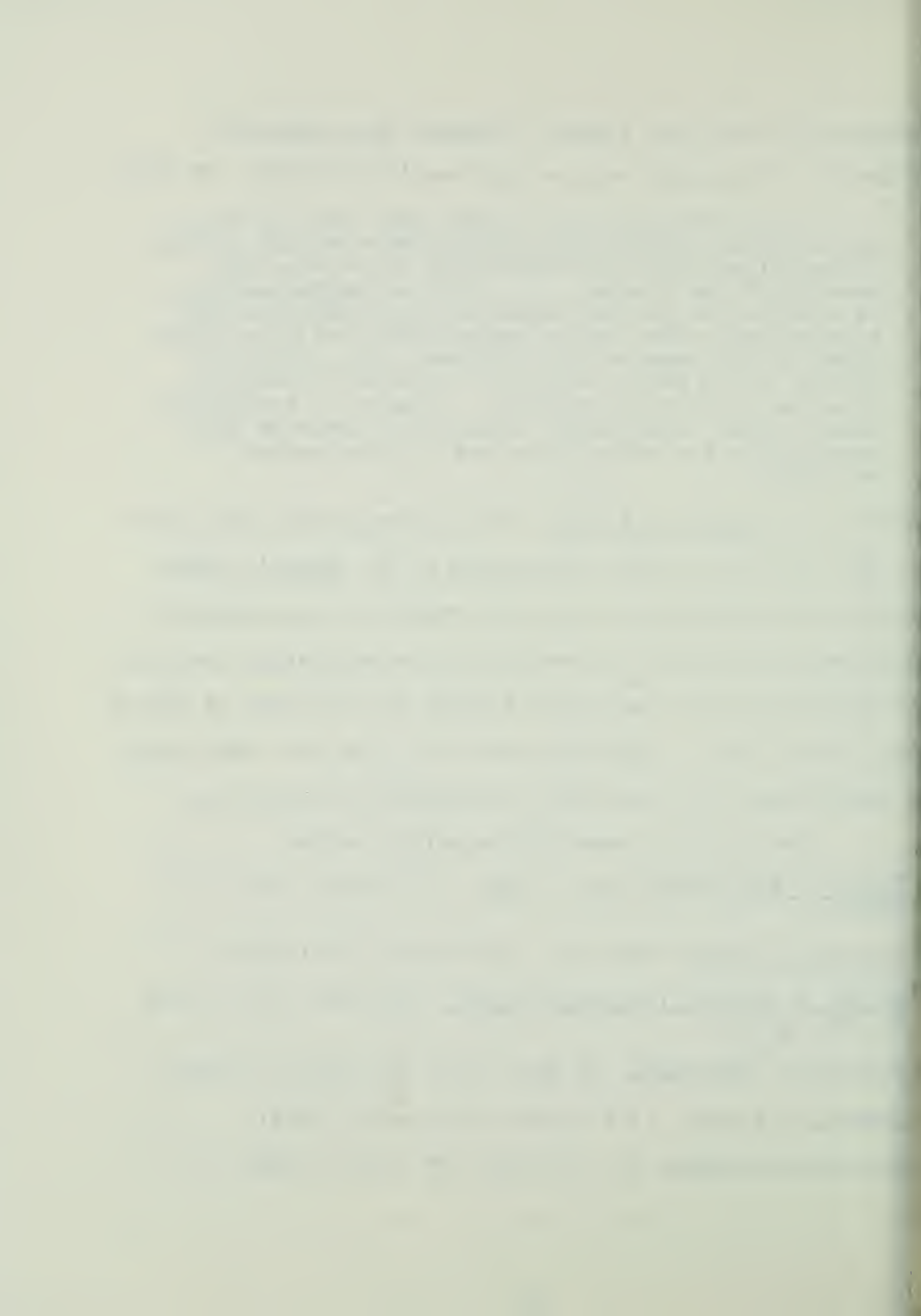
Eppstein v. Kuhn, 225 Ill. 115, 80 N.E. 80 (1906);

Wright v. Houdaille-Hershey Corp., 321 Mich. 21, 31 N.W. 2d 845 (1948);

Torelle v. Templeman, 94 Mont. 149, 21 P.2d 60 (1933);

Jasper v. Wilson, 14 N.M. 482, 94 P. 951 (1908);

Prilik v. Goodman, 111 N.Y.S.2d 916 (S.Ct. 1952).



iver of performance cases) cited by the Appellant involves situations analogous to that in Koon v. Maui Dry Goods and Grocery Company, Ltd., 30 Haw. 313 (1928) (Brief for Appellant p.20), where the plaintiff brought a suit for the specific performance of an agreement for the assignment of a lease. The Hawaii court recognized that full performance of the contract could not be specifically decreed since the defendant-lessee was unable to obtain a release from a sub-lessee. The plaintiff was held to be entitled to specific performance in part and to an abatement in the purchase price and damages for defendant's failure to perform. An example of such a waiver in the factual context of the instant case would have arisen if a valid contract to lease had been created with the terms of the subordination clause definitely set forth, and then the Appellees were unable to perform because a pre-existing lien on the property prevented the subordination of the fee as agreed upon by the parties. The Appellant then would be in a position to specifically enforce the contract to lease, waiving the Appellees' failure to completely perform.

The Appellant assumes throughout its brief that the alleged option to lease ripened into a valid contract on all its terms save one" (Brief for Appellant p.25), and its argument is based upon that premise. Not only is the premise thus assumed the very issue to be decided in this

[The page contains extremely faint, illegible text, likely bleed-through from the reverse side of the document. The text is arranged in approximately 20 horizontal lines across the page.]

se but all the waiver of performance cases cited by the appellant deal with contracts that are valid, binding and certain in all their terms, the only problem being whether the terms are specifically enforceable or whether equity is the proper remedy.

The Appellant cites a second group of cases ^{1/} (hereinafter called deferred payment cases) involving contracts or options for the purchase of real property which were held specifically enforceable by the purchaser where a provision for deferred payment was indefinite but the purchasers offered full payment of the purchase price in cash. However, in all the deferred payment cases the waiver was either made within the time period allowed in the contract or the contract was silent as to time. In the instant case, the date of expiration of the alleged option was August 1, 1963 and the appellees made their offer of waiver in open court 17 months after the time to exercise the option expired, and 14 months after their own answer and counterclaim for specific perfor-

Morris v. Ballard, 16 F.2d 175 (D.C.Cir. 1926);

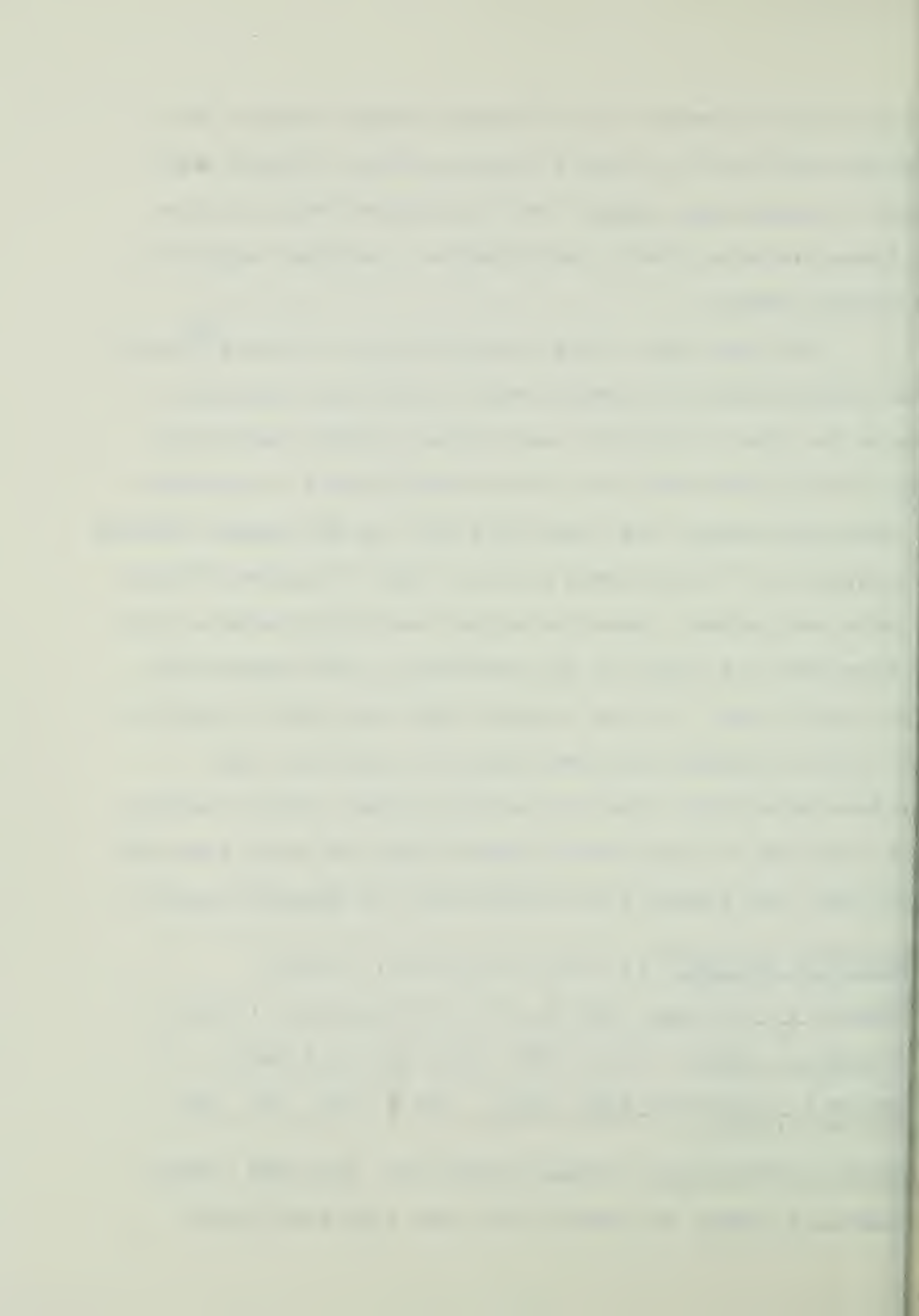
Blanton v. Williams, 209 Ga. 16, 70 S.E.2d 461 (1952);

Trotter v. Lewis, 185 Md. 528, 45 A.2d 329 (1946);

Levine v. Lafayette Bldg. Corp., 103 N.J.Eq. 121, 142 Atl. 441 (1928);

Haire v. Patterson, 63 Wash.2d 282, 386 P.2d 953 (1963);

Hubbell v. Ward, 40 Wash.2d 779, 246 P.2d 468 (1952).



nce in this action. No case has been cited or discovered
ere a court has allowed a waiver of an essential term at
ch a time.

It is the Appellees' contention that the uncer-
nty of an essential term makes the alleged option void
d unenforceable under any circumstances but, assuming for
e sake of argument that the alleged option to lease was
pable of being exercised, the question is what rights
re created in the Appellant by its delivery of notice of
ercise on July 26, 1963 (R:5,45). The only possible result
a valid exercise of the option would be an executory
lateral contract to lease binding on both parties.
wever, the Appellant even after its notice of exercise,
s never been bound to execute any lease since it has been
ee at all times to insist upon a subordination provision
which provision is by way of example, but not by way of
imitation") absolutely satisfactory to itself. In view of
e fact that the Appellant has never been bound by a promise
accept a lease granted by the plaintiffs, a bilateral
ntract binding upon both parties could not have resulted
om the defendant's exercise of the option. It seems clear
at if no bilateral contract was created by August 1, 1963,
e date of expiration of the option, the option was not
fectively accepted and is deemed rejected as a matter of

[The text on this page is extremely faint and illegible. It appears to be a list or a series of entries, possibly containing names and dates, but the specific content cannot be discerned.]

1/
w. Time is of the essence in an option which expressly
defines the duration of the offer. 1A Corbin, Contracts
273 (1963) states:

"If the time for acceptance of an ordinary offer is expressly limited by the offeror, acceptance must take place within that time or not at all; time is of the essence. The same is true of an offer that has the form of an option contract."

In effect, the Appellant is contending that it had a continuous option for an indefinite period from August 1, 1963 to waive the subordination provision and accept the offer to contract to lease without the provision, even though such provision was necessary for the protection of lessor's interests. The Appellant understandably cites no authority for such a contention.

The decisions in the deferred payment cases are based upon the assumption that the provision being waived is of benefit only to the party seeking specific performance. The Appellant admits that the subordination clause in this case might be of some benefit to the Appellees (Brief for Appellant p.28), but the Appellant requests the court to change the terms of the alleged option by eliminating the subordination clause on the grounds that the probability of benefit to the Appellees is based upon speculation. This is precisely what the court in Magna Development Company v.

Failure to accept during the term of the option amounts to a rejection. 55 Am.Jur. Vendor and Purchaser, p.508, § 39.

[The text on this page is extremely faint and illegible. It appears to be a standard page of prose with multiple paragraphs. The content is not discernible.]

ed, supra, and the court below declined to do because
the words of the court below (R:115):

"If the waiver were here sanctioned, this court would be creating a new and different contract from that which both parties attempted to make."

The Appellant argues that unless the benefit of the subordination clause to the Appellees can be shown with certainty the Appellant should be allowed to waive the clause at any time.

It is obvious that the Appellees contemplated that they would receive a benefit by having a completed structure on their premises through the device of a properly negotiated subordination clause and the court below properly refused to assume that this clause was of no benefit to them. The court below recognized that a subordination provision in a lease is normally one of the factors assuring that the leased property will be developed to its highest and best use to the substantial benefit of the property owner. As stated by the court below (R:117):

"The term of the lease was to be 56 1/2 years. If a building of x value were placed thereon, it might be completely depreciated by the time the lease expired, whereas if a building of y value were built thereon, it might still be of great value to the lessor at the termination of the lease. The difference between an x or y building might well be the difference between subordination and no subordination of the fee, and in that difference the plaintiff [Appellees] had an obvious interest and potential benefit."

The Appellant argues that the court should eliminate

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that this is essential for ensuring transparency and accountability in the organization's operations.

2. The second part of the document outlines the various methods and tools used to collect and analyze data. It highlights the need for consistent and reliable data collection processes to support effective decision-making.

3. The third part of the document focuses on the role of technology in data management and analysis. It discusses how modern software solutions can streamline data collection, storage, and reporting, thereby improving efficiency and accuracy.

4. The fourth part of the document addresses the challenges associated with data management, such as data quality, security, and privacy. It provides strategies to mitigate these risks and ensure that data is used responsibly and ethically.

5. The fifth part of the document discusses the importance of data governance and the role of various stakeholders in ensuring data integrity and compliance with relevant regulations and standards.

6. The sixth part of the document explores the benefits of data-driven decision-making and how it can lead to improved performance, innovation, and competitive advantage for the organization.

7. The seventh part of the document provides a summary of the key points discussed and offers recommendations for implementing a robust data management strategy.

8. The eighth part of the document concludes by emphasizing the ongoing nature of data management and the need for continuous monitoring and improvement to stay ahead in a rapidly changing business environment.

9. The ninth part of the document includes a detailed appendix with additional information, such as a glossary of terms, a list of references, and a list of figures and tables. This section provides a comprehensive resource for readers who want to delve deeper into the topics discussed in the main text.

10. The tenth part of the document provides contact information for the authors and a list of acknowledgments, recognizing the contributions of individuals and organizations that supported the research and development of this document.

the subordination provisions since the courts in the deferred payment cases eliminated terms of payment in spite of the remote possibility that the sellers could have derived some benefit from the extension of credit. With one possible exception ^{1/} the provisions of the contracts involved in the deferred payment cases permitted, either expressly or by implication, the cash payment of the balance of the purchase price and the courts were not in the position of having to change the terms of the agreements involved. The distinctions noted by the court below as follows (R:116):

"The cases cited by the defendant [Appellant] are in accord with its contention that a vendee may waive his conditional right, which waiver, if allowed, thereafter leaves the contract an enforceable obligation within the ambit of its own terms as agreed upon by the parties."

The exclusion of the subordination provision urged the Appellant would not leave the alleged option within the ambit of its own terms as agreed upon by the parties. It is noteworthy that the Appellant concludes the waiver section of its brief with offering, in effect, to negotiate the terms of the subordination provision with the Appellees ("by offering to waive only so much thereof as appellees desire" (Brief for Appellant p.31)). The Appellees submit that negotiation of alteration as to the terms of the subordination provision is exactly what the alleged option to lease contemplated, and that the summary judgment on the "illusory contract" was properly entered.

¹ See Levine v. Lafayette Bldg. Corp., 103 N.J.Eq. 121, 142 Atl. 441 (1928). The New Jersey rule is clear, however, that a belated waiver in open court as attempted in the instant case would not be tolerated. 142 Atl. at 449.

[The text on this page is extremely faint and illegible. It appears to be a multi-paragraph document, possibly a letter or a report, with several lines of text visible but not readable.]

AN ACTION FOR DAMAGES IN LIEU OF
SPECIFIC PERFORMANCE CANNOT BE
MAINTAINED UNDER THE STATUTE OF
FRAUDS.

Appellant maintains that the court below erred in awarding damages to the Appellant for the breach of the alleged option (Brief for Appellant pp.32-34). Under the Hawaii Statute of Frauds, however, "no action" can be brought if the documents relied upon for the agreement are ^{1/} sufficient under that statute.

By contending that the Appellant is entitled to an award of damages, the Appellant would have to concede that the alleged option is not sufficiently definite or complete in its terms (including, of course, the subordination clause) to be specifically enforced. Since the subordination clause was an essential term, a fortiori the contract did not come into existence to be the basis for a damage action.

The waiver by the Appellant ^{2/} of the subordination provision in order to "eliminate any possibility of difficulty with respect to damage computation" cannot now be made the basis for a damage action. Appellant cannot waive an essential

Revised Laws of Hawaii 1955, as amended, § 190. 49 Am.Jur. Statute of Frauds, § 539 states: "It is a general principle that an invalid or unenforceable contract forms no basis for an action for damages occasioned by the breach of any obligation attempted to be imposed thereby."

Brief for Appellant p.33.

[Faint Title]

[Faint, illegible text block]

[Faint, illegible text block]

m (simply for alleged ease in damage computations) and
ll have a contract remaining for a claim for damages.

The court below's determination that a proper sub-
ordination clause was for the benefit of both lessor and lessee
a clear inference from the undisputed facts. The parties
contemplated the construction of a complete structure on the
leased premises. The magnitude of the structure and the
lessor's reversionary interest in the completed structure
all tied to a properly negotiated subordination clause,
such negotiation was also contemplated by the parties.
Appellant's waiver of an essential but not fully negotiated
term of a contract furnishes no basis giving a remedy for an
alleged contract which was not completed, and hence not
binding on either party.

V

LIS PENDENS CANNOT BE FILED IN AN
ACTION PENDING IN THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF
HAWAII INVOLVING REAL PROPERTY.

Appellant argues that the court below also erred in
issuing its notice of lis pendens filed October 25, 1963
on the grounds that a lis pendens does not expire upon the
issuance of a judgment but only upon the final determination
of the case, including the outcome of any appeals.

A notice of lis pendens in a federal action cannot
properly be filed in a state recording office until the state
enacts the necessary laws contemplated by 28 U.S.C.

The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes the need for transparency and accountability in financial reporting.

Secondly, the document outlines the various methods used to collect and analyze data. It highlights the use of statistical techniques to identify trends and patterns in the data.

Thirdly, the document discusses the challenges faced in data collection and analysis. It notes that incomplete or inconsistent data can lead to misleading conclusions.

Finally, the document concludes by emphasizing the importance of ongoing monitoring and evaluation. It suggests that regular reviews can help identify areas for improvement and ensure the accuracy of the data.

The second part of the document focuses on the specific procedures for data collection. It details the steps involved in designing a survey or questionnaire to gather the necessary information.

It also discusses the importance of ensuring that the data collection process is unbiased and representative of the target population. This involves careful selection of participants and the use of random sampling methods.

Furthermore, the document addresses the issue of data quality. It provides guidelines for ensuring that the data is accurate, reliable, and consistent. This includes training staff and implementing quality control measures.

In conclusion, the document stresses the need for a systematic and rigorous approach to data collection and analysis. It encourages the use of best practices to ensure the integrity and validity of the results.

1/
1964, i.e., a specific statute authorizing a notice of
action concerning real property pending in a United
States District Court to be recorded in the same manner as
required of a notice of an action concerning real property
pending in a state court.

The decision of the court below dated November 2,
1955 is disparitive of this point: 2/

"The legislative history of the present R.L.H.
1955, Section 230-42, shows that the Senate Judiciary
Committee reported on H.B. 181 of Hawaii's 1927
legislature, creating a new section of the Revised
Laws of Hawaii 1925 relating to notice of pendency
of action:

'The purpose of this Bill is to require the
filing in the office of the Registrar of
Conveyances a notice of the pendency of any
action brought in any Circuit Court [of the
Territory] involving the title to real estate.'
(Emphasis added.)

"The United States District Court for the
Territory of Hawaii had long before been established
by Congress.

28 U.S.C. § 1964 provides:

"Constructive notice of pending actions

"Where the law of a State requires a notice of an
action concerning real property pending in a court of the
State to be registered, recorded, docketed, or indexed in
a particular manner, or in a certain office or county or
parish in order to give constructive notice of the
action as it relates to the real property, and such law
authorizes a notice of an action concerning real property
pending in a United States district court to be regis-
tered, recorded, docketed, or indexed in the same
manner, or in the same place, those requirements of the
State law must be complied with in order to give con-
structive notice of such an action pending in a United
States district court as it relates to real property in
such State."

See also Appendix A.

1. The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that this is crucial for the company's financial health and for providing reliable information to stakeholders.

2. The second part of the document outlines the specific procedures for recording transactions. It details the steps from identifying a transaction to entering it into the accounting system, ensuring that all necessary details are captured.

3. The third part of the document discusses the role of the accounting department in monitoring and controlling the company's financial performance. It highlights the importance of regular reviews and the use of financial ratios to assess the company's position.

4. The fourth part of the document addresses the challenges of financial reporting and the need for transparency. It stresses that clear and honest reporting is essential for building trust with investors and other interested parties.

5. The fifth part of the document concludes by summarizing the key points and reiterating the commitment to high standards of financial reporting. It expresses confidence in the company's ability to meet these standards and to continue to grow and prosper.

6. The sixth part of the document provides a detailed overview of the company's financial performance over the past year. It includes a breakdown of revenue, expenses, and profit, along with a comparison to the previous year and industry benchmarks.

7. The seventh part of the document discusses the company's financial outlook for the coming year. It outlines the key strategies and initiatives that will be implemented to drive growth and improve financial performance.

8. The eighth part of the document addresses the company's financial risks and the measures being taken to mitigate them. It highlights the importance of proactive risk management and the role of the accounting department in identifying and assessing risks.

9. The ninth part of the document provides a final summary and expresses the company's commitment to transparency and accountability. It thanks the stakeholders for their support and looks forward to a successful future for the company.

"United States Senate Report No. 2131 on H.R. 7306 -- which eventually became 28 U.S.C. § 1964 -- stated:

'The purpose of the proposed legislation is to provide that notice of an action . . . [lis pendens] with respect to real property, pending before a United States district court, must be recorded if the State law so provides, in order to be considered constructive notice to others that such action is pending.

* * * *

'The legislation contains two requirements: (1) the State law must require that notice of local suits in State courts (as distinguished from Federal courts) be registered [etc.]; and (2) the State law must also expressly authorize notice of Federal suits to be registered, indexed, etc., in the same manner as notices in State courts. These provisions . . . will not become effective within a State until it has expressly authorized such registering, . . . etc. . . .

'In order that Federal litigants may obtain the same protection as is offered in State court actions, the bill provides that the State law authorizing the registering, etc., of Federal notices must be the same as that for registering of State notices in State court actions'

Anent the same bill, the Assistant Director of the Administrative Office of the United States Courts advised the Committee on the Judiciary of the House of Representatives:

'[W]ith respect to notice of the institution of suits in the Federal district courts concerning real property by providing that they should not have the effect of lis pendens unless registered, recorded, docketed, or indexed as the State law provides, if in fact the State law does provide for such registering, recording, docketing, or indexing of such Federal suits.'

The Deputy Attorney General writing to the same committee also advised that committee that H. R. 7306 did not apply unless (1) the State already had a lis pendens

The following data were obtained from the study of the reaction of the various substituted benzenes with the various substituted benzenes. The results are given in the following table.

Substituent	Reaction Rate
Hydrogen	1.0
Methyl	1.5
Ethyl	2.0
Propyl	2.5
Butyl	3.0
Phenyl	4.0
Chlorine	5.0
Bromine	6.0
Iodine	7.0
Nitro	8.0
Sulfonate	9.0

The above data show that the reaction rate increases with the size of the alkyl group and with the presence of electron-withdrawing groups. The reaction rate is also affected by the position of the substituent on the benzene ring.

The following table shows the effect of the position of the substituent on the benzene ring on the reaction rate.

Position	Reaction Rate
Ortho	1.0
Meta	1.5
Para	2.0

The above data show that the reaction rate is highest for the para position and lowest for the ortho position. This is due to the steric hindrance of the ortho position.

statute and (2) the laws of that State also provided for similar recording of notice of an action concerning real property pending before a United States district court in such State. The Assistant Secretary of the Interior, writing to the same committee, likewise advised that same committee to the same effect.

"From the legislative history of both the State and Federal acts, it becomes clear that Hawaii's lis pendens statute does not apply to suits pending in the United States district court, cf. King v. Davis, 137 Fed. 222, 240 (Cir.Ct. Va. 1905), and the registrar of the Bureau of Conveyances had neither the duty nor the legal power to accept and file the same under Section 343-47, R.L.H. 1955, since the lis pendens referred to in that section, being strictly a creature of the Hawaiian statutes, could and did refer only to cases filed in the circuit courts in the State of Hawaii."

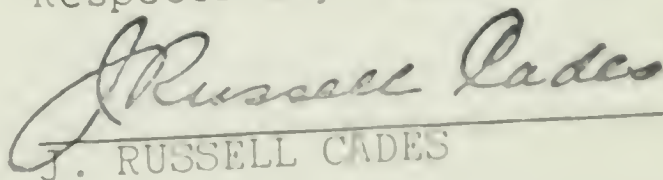
Accordingly, the judgment cancelling the lis pendens October 25, 1963 was proper in all respects (R:119-121).

VI

CONCLUSION

For the reasons stated herein, the judgment should in all respects be affirmed.

Respectfully submitted,


J. RUSSELL CADES

WILLIAM M. SWOPE

WILLIAM M. SWOPE

Of Counsel

SMITH, WILD, BEEBE & CADES

Attorneys for Appellees

Faint, illegible text at the top of the page, possibly a header or introductory paragraph.

Second block of faint, illegible text, appearing to be the main body of the document.

Third block of faint, illegible text, continuing the main body of the document.

James C. [illegible]

Bottom section of the page containing faint, illegible text, possibly a signature or footer.

CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.



J. RUSSELL CADES

WILLIAM M. SWOPE

WILLIAM M. SWOPE

Faint, illegible text at the top of the page, possibly a header or introductory paragraph.

Thomas Green

1875

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

JOSEPH TAU TET HEW and HELEN
MONA HEW, husband and wife,
MORRIS TAN and SHIZUKO RUTH TAN,
band and wife,

Plaintiffs,

v.

LAHAINA-MAUI CORPORATION,
California corporation,

Defendant.

CIVIL NO. 2192

DECISION ON PLAINTIFFS' MOTION TO REMOVE LIS PENDENS

Plaintiffs, owning real property on Maui, in 1963 executed an option to lease the property to defendant's predecessors in interest. Before the expiration of the option, defendant signed and delivered to the plaintiffs a notice of exercise of the option to lease. Within one month thereafter, plaintiffs informed defendant that such option to lease was null and void, and on August 29, 1963, plaintiffs filed a complaint in the State court, seeking a declaration of the option and a declaration that it was null and void. Thereafter, defendant had the case removed to this court on the grounds of diversity, and on October 21, 1963, filed a counterclaim seeking specific performance of the lease in the form attached to the counterclaim.

On October 25, 1963, defendant, purporting to do so under R. L. H. 1955 Section 230-42, recorded a notice of

Dear Sir,
I have the pleasure to acknowledge the receipt of your letter of the 14th inst. in relation to the above mentioned matter.
The same has been forwarded to the proper authorities for their consideration.
Very respectfully,
[Signature]

Very truly yours,
[Signature]

pendency of the suit, i.e., lis pendens, in the Bureau of Conveyances, State of Hawaii. A similar notice was filed with the assistant registrar of the Land Court of the State of Hawaii under Section 342-78, R.L.H. 1955, since a portion of the land involved was registered therein.

Thereafter, ruling upon plaintiffs' motion for summary judgment, on June 30, 1965, this court entered judgment in favor of plaintiffs and against defendant, and ordered the lis pendens removed.

Defendant gave timely notice of appeal, and on June 30, 1965, filed a new lis pendens in the Bureau of Conveyances. On September 9, 1965, a notice of motion to remove lis pendens, or in the alternative posting a supersedeas bond, was filed by the plaintiffs, and thereafter the same was argued and submitted.

As indicated from the motion, the defendant has never filed a supersedeas bond under F.R.Civ.P. 62, in order to obtain a stay, and admittedly is relying upon the lis pendens to effect the same result -- without cost to the defendant.

Plaintiffs urge that a lis pendens notice of this Federal action cannot properly be filed in the Bureau of Conveyances because the State of Hawaii does not have a law such as is contemplated by 28 U.S.C. § 1964, i.e., a specific statute authorizing a notice of an action concerning real property pending in a United States district court to be

Faint, illegible text at the top of the page, possibly a header or introductory paragraph.

Second block of faint, illegible text, appearing to be a separate section or paragraph.

Third block of faint, illegible text, continuing the document's content.

Fourth block of faint, illegible text, showing further progression of the document.

Fifth block of faint, illegible text, possibly a concluding paragraph or a list.

Sixth block of faint, illegible text, located in the lower portion of the page.

orded in the same manner as required of notice of an
ion concerning real property pending in the State court.
intiffs also urge that the operation of the notice of
pendens filed June 30, 1965, is preventing the plaintiffs
m dealing with or developing their property as is their
ht to do after the judgment in their favor, in the
ence of a supersedeas bond. Defendant urges (1) that
s court has no power to cancel the lis pendens of June
1965; (2) that even if plaintiffs contention regarding
effect of 28 U.S.C. § 1964 were correct, all that this
rt could do would be to rule that such filing of a lis
dens was unnecessary; and (3) that notice must be filed
h the Land Court under Section 342-78, R.L.H. 1955.

The legislative history of the present R.L.H.
5, Section 230-42, shows that the Senate Judiciary
mittee reported on H.B. 181 of Hawaii's 1927 legislature,
ating a new section of the Revised Laws of Hawaii 1925
ating to notice of pendency of action:

"The purpose of this Bill is to require the filing
in the office of the Registrar of Conveyances a
notice of the pendency of any action brought in
any Circuit Court [of the Territory] involving
the title to real estate." (Emphasis added.)

The United States District Court for the Territory
Hawaii had long before been established by Congress.

United States Senate Report No. 2131 on H.R.

6 -- which eventually became 28 U.S.C. § 1964 --

ted:

... ..
... ..
... ..
... ..

... ..
... ..
... ..
... ..

... ..
... ..
... ..
... ..

... ..
... ..
... ..
... ..

... ..
... ..
... ..
... ..

... ..
... ..
... ..
... ..

"The purpose of the proposed legislation is to provide that notice of an action . . . [lis pendens] with respect to real property, pending before a United States district court, must be recorded if the State law so provides, in order to be considered constructive notice to others that such action is pending.

* * * *

"The legislation contains two requirements: (1) the State law must require that notice of local suits in State courts (as distinguished from Federal courts) be registered [etc.]; and (2) the State law must also expressly authorize notice of Federal suits to be registered, indexed, etc., in the same manner as notices in State courts. These provisions . . . will not become effective within a State until it has expressly authorized such registering, . . . etc. . . .

"In order that Federal litigants may obtain the same protection as is offered in State court actions, the bill provides that the State law authorizing the registering, etc., of Federal notices must be the same as that for registering of State notices in State court actions"

At the same bill, the Assistant Director of the Administrative Office of the United States Courts advised the Committee on the Judiciary of the House of Representatives:

"[W]ith respect to notice of the institution of suits in the Federal district courts concerning real property by providing that they should not have the effect of lis pendens unless registered, recorded, docketed, or indexed as the State law provides, if in fact the State law does provide for such registering, recording, docketing, or indexing of such Federal suits."

Deputy Attorney General writing to the same committee also advised that committee that H. R. 7306 did not apply unless (1) the State already had a lis pendens statute and the laws of that State also provided for similar recording of notice of an action concerning real property pending

Faint, illegible text at the top of the page, possibly a header or introductory paragraph.

Second block of faint, illegible text, appearing to be a paragraph or two of a letter or document.

Third block of faint, illegible text, continuing the document's content.

Fourth block of faint, illegible text, possibly a signature block or a closing paragraph.

Fifth block of faint, illegible text at the bottom of the page, possibly a footer or a final note.

ore a United States district court in such State. The
instant Secretary of the Interior, writing to the same
mittee, likewise advised that same committee to the
e effect. 1/

From the legislative history of both the State and
eral acts, it becomes clear that Hawaii's lis pendens
tute does not apply to suits pending in the United States
trict court, cf. King v. Davis, 137 Fed. 222, 240 (Cir.
Va. 1905), and the registrar of the Bureau of Conveyances
neither the duty nor the legal power to accept and file
same under Section 343-47, R.L.H. 1955, since the lis
dens referred to in that section, being strictly a
ature of the Hawaiian statutes, could and did refer only
cases filed in the circuit courts in the State of Hawaii.
h the notice of lis pendens filed October 25, 1963,
ore the judgment was rendered in the instant case, as well
the lis pendens filed on June 30, 1965, filed after
gment in the instant case, were improperly and illegally
ed. We need, however, concern ourselves at this time
y with that filed on June 30, inasmuch as this court as
t of its judgment cancelled the first lis pendens.

Defendant also urges that inasmuch as a portion of
property affected by the instant action has been regis-
ed in the Land Court of the State of Hawaii under Section

For the legislative history of H.R. 7306, see United
tes Code, Congressional and Administrative News, 85th
gress--Second Session 1958, Volume 2, pp. 3654-3658.

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice. The second part outlines the procedures for handling discrepancies and errors, including the steps to be taken when a mistake is identified. The third part provides a detailed explanation of the accounting cycle, from identifying the accounting entity to preparing financial statements. The fourth part discusses the role of internal controls in preventing fraud and ensuring the integrity of the financial data. The fifth part covers the requirements for external audits and the importance of transparency in financial reporting. The sixth part addresses the legal implications of financial misstatements and the consequences of non-compliance with accounting standards. The seventh part discusses the impact of technology on accounting practices and the need for continuous learning and adaptation. The eighth part provides a summary of the key points discussed in the document and offers recommendations for best practices. The ninth part includes a list of references and sources used in the research. The tenth part concludes with a statement of the author's commitment to accuracy and integrity in the accounting profession.

"The purpose of the proposed legislation is to provide that notice of an action . . . [lis pendens] with respect to real property, pending before a United States district court, must be recorded if the State law so provides, in order to be considered constructive notice to others that such action is pending.

* * * *

"The legislation contains two requirements: (1) the State law must require that notice of local suits in State courts (as distinguished from Federal courts) be registered [etc.]; and (2) the State law must also expressly authorize notice of Federal suits to be registered, indexed, etc., in the same manner as notices in State courts. These provisions . . . will not become effective within a State until it has expressly authorized such registering, . . . etc. . . .

"In order that Federal litigants may obtain the same protection as is offered in State court actions, the bill provides that the State law authorizing the registering, etc., of Federal notices must be the same as that for registering of State notices in State court actions"

nt the same bill, the Assistant Director of the Administrative Office of the United States Courts advised the committee on the Judiciary of the House of Representatives:

"[W]ith respect to notice of the institution of suits in the Federal district courts concerning real property by providing that they should not have the effect of lis pendens unless registered, recorded, docketed, or indexed as the State law provides, if in fact the State law does provide for such registering, recording, docketing, or indexing of such Federal suits."

Deputy Attorney General writing to the same committee o advised that committee that H. R. 7306 did not apply ess (1) the State already had a lis pendens statute and the laws of that State also provided for similar recording of notice of an action concerning real property pending

... the ... of the ...
... the ... of the ...
... the ... of the ...
... the ... of the ...

... the ... of the ...
... the ... of the ...
... the ... of the ...
... the ... of the ...

... the ... of the ...
... the ... of the ...
... the ... of the ...
... the ... of the ...

... the ... of the ...
... the ... of the ...
... the ... of the ...

... the ... of the ...
... the ... of the ...
... the ... of the ...
... the ... of the ...

... the ... of the ...
... the ... of the ...
... the ... of the ...

... the ... of the ...
... the ... of the ...
... the ... of the ...

Defendant urges that this court has no power to
cancel the lis pendens or the registry of the same with
Land Court.

As was said in Dice v. Bender, 117 A2d 725,

Pa. 94 (1955):

"The contention was there, as here, that the lien upon the properties obtained by the lis pendens could not be set aside by the court. This contention indicates a misapprehension of the doctrine in question [T]he effect of a lis pendens is not to establish actual liens upon the properties affected nor has it any application as between the parties to the action themselves; all that it does is to give notice to third persons that any interest they may acquire in the properties pending the litigation will be subject to the result of the action [L]ong before the enactment of any statutory regulations on the subject, the mere pendency of a suit in equity affecting the title to real property was held, both at common law and in equity, to constitute constructive notice thereof to all the world, and the registry statutes, so far from creating the doctrine, actually limited its application by making it effective only if the action were indexed in accordance with the statutory requirements. In short, being a creature not of statute but of common law and equity jurisprudence, the doctrine of lis pendens is wholly subject to equitable principles. Thus, . . . if the operation of the doctrine should prove to be harsh or arbitrary in particular instances, equity can and should refuse to give it effect, and, under its power to remove a cloud on title, can and should cancel a notice of lis pendens which might otherwise exist.

* * * *

"The court below undoubtedly had the inherent power to remove what was an unwarranted cloud on defendants' title"

From King v. Davis (cited by the defendant), supra

27-8, it is manifest that when a party has lost a

title by fraud, accident or mistake -- particularly as here

Faint, illegible text, possibly bleed-through from the reverse side of the page.